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IV. COUNTRY UPDATES PART IV

A. *Argentina*JORGE ORTIZ¹⁹

I left Argentina in 1988 to come to the United States for four years. If somebody would have told me in 1988 that, by 1992, Argentina's GNP would be growing at the rate of 9%, after a growth of 8.5% in 1991, that inflation would be 18% and the forecast for 1993 would be 10%, that the majority of the state-owned companies would be privatized, and that Argentina would get access to the Brady Plan and would have rescheduled twenty-nine billion dollars of its foreign debt for thirty years, with a discount estimated at 12.5% of the principal amount due, frankly, I would not have believed it. But it happened. Now, because it happened, is Argentina paralyzed? Are we in heaven? No, not in heaven, just out of hell.

Let us review the changes that occurred in Argentina in 1992. A forewarning, however: I will not simply list the laws that were enacted or abrogated during that period. I will try to go beyond that and explain the trends, rationales, and plans behind those changes in our legal system. From that point of view, I think that three laws and one decree are the key to understanding what happened in Argentina during the last three years. The laws and decree are the Public Sector Reform Law, the Declaration of Emergency Law, the Convertibility Law, and the Deregulation Decree.

The Public Sector Reform Law and the Declaration of Emergency Law allowed the government to privatize state-owned companies, provided for the elimination of subsidies and benefits, and set forth strong penalties for tax evasion, thus helping to balance the budget. The Convertibility Law set forth a one-to-one parity between the dollar and the peso, the obligation for the government to maintain dollar reserves at least equal to the monetary base, and the elimination of indexation in all contracts. The above helped to achieve a dramatic reduction in the rate of inflation, and with that, medium-term planning and consumer credit appeared in the economy. Finally, the Deregulation Decree basically intends to eliminate all restrictions in the offering of goods and services in the marketplace and any limitation to the free negotiation of prices between parties. This law helped to move the economy and to reduce prices for certain goods and services. The combination of those measures explained the dramatic reaction in the rates of exchange. The Public Sector Reform Law and Declaration of Emergency

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Law provided the framework for privatization, the central bank Organic Law, and the capital-market modernization.

Regarding privatization, there was consensus in Argentina that privatization of the state-owned companies and services was the right thing to do, as it was impossible for the country to continue absorbing the huge deficits produced by the state-owned companies. The privatizations took place through selling business units and companies, granting services in concession, oil joint ventures, and public offering shares. Of these methods, oil concessions and selling business units were the most common.

Now that I have given you the facts about the privatization, who are the owners, and what are they planning to do? I will focus on the lessons we learned from privatization. Lesson number one: avoid moving state monopolies into private monopolies. Iberia is the majority shareholder of both Aerolineas and Austral and has a regular monopoly in internal regular flights. The consequence of such a monopoly is simple: horrible service and high prices. The lack of competition in international communications produced similar consequences. For example, a call from Buenos Aires to Boston costs more than double a call from Boston to Buenos Aires. Lesson number two: define clearly the investments that new owners must make. Several roads and highways built twenty years ago were granted concessions. The only investment the new owners made was the construction of the gates and cutting the grass on the sides of the highways. Now, we pay between one and two dollars every seventy-five miles to drive on the same highways we were driving on before for free. Lesson number three: focus on the future needs of the country and its citizens rather than on immediate income. ELMA is the national shipping company. It had a reserve of 50% of the cargo to and from Argentina. By keeping such a reserve, the government could have sold ELMA and obtained a good price for it. The country, however, would have paid higher freights for several years. The government made the right decision and decided to sell ELMA without the reserve of cargo. There were no bidders, but the shipping industry is now benefitting from the lower freights derived from the tremendous competition in the shipping business. Finally, and most importantly, protect the customers of the privatized companies and do not always take the highest bid. The customers simply want more reliable service at a decent price. I think this was taken into consideration in the privatization of the water and sewage company. The government followed this rule and gave the concession of the water and sewage service to an international consortium that offered the highest discount over the existing tariffs and made a commitment to extend the service to new areas.

The Central Bank Charter Law declared the central bank an entity, free to govern itself and formulate and implement the monetary policies it deems necessary, independent of the executive power. The fundamental mission of

the central bank is now very clear: it must preserve the value of the Argentine currency. The central bank now has autonomy from the government. It is prohibited from financing the government. The only exception is in the purchase by the central bank of treasury bills at the market price. However, on an annual basis, the central bank cannot increase its holding of treasury bills in excess of 10% per year and, during the next six years, the treasury bills cannot exceed 20% of the central bank reserves and 33% thereafter.

Such rules and compliance with them are the key to maintaining the convertibility of the peso. If the central bank finances government spending by printing, let us say, one peso without having one additional dollar in reserves, then the central bank will no longer be in the position to exchange all pesos that are presented for sale at the one-to-one parity set forth in the Convertibility Law. Furthermore, the restrictions imposed on the central bank will hopefully reduce government spending.

Regarding capital-market modernizations, our Securities and Exchange Commission, *Comisión Nacional de Valores (CNV)*, played a key role in modernizing our capital market. It enacted new regulations tending to increase the number of companies that go public and tending to protect the investors. Requirements have been eased. Stock exchanges have two sections where securities will be listed. The special section will be reserved for major companies, that is, companies whose capital exceeds sixty million, or have sales in excess of 100 million per year, or have more than 1000 shareholders or 30% of its equity distributed in the hands of the public, or the nominal value of its stock and/or commercial paper or bond offerings exceed sixty million. The general section will be reserved for small companies. That is, companies that do not fall into any of the above categories, but maintain a minimum of 150 shareholders or 20% of its shares distributed among the general public. The latter will not be obliged to present quarterly audited balance sheets and has simpler reporting requirements. Companies not presently making a public offering of securities can request to be listed in the stock exchange in a section designed for new projects as a way of raising venture capital. Recently privatized companies and state-owned companies subject to privatization can, under certain conditions, apply for authorization to make a public offering of securities providing simplified financial information. Issuance of stock without voting rights will be permitted. The holders will have the right to receive dividends, and, in case of liquidation of the company, will be repaid prior to holders of ordinary shares.

The *Comisión Nacional de Valores* set forth new requirements to protect investors. First, the CNV created obligations on the part of members of board and senior management of public companies to notify the CNV about their stock ownership and their purchases and sales of company stock.

Second, statements and advertising made by public companies must be clear, avoiding any exaggeration that could lead investors to confusion. Third, any person or group that purchases more than 5% of the voting stock of a public company must give notice to the CNV and to the stock exchange where the stock is listed. This notice must indicate whether the investor has the intention to take control of the company. Fourth, any new offering of commercial paper or company bonds requires rating by two risk assessment companies. Fifth, tender offers were specifically regulated. Purchase conditions cannot be modified once published except for the price, which may be increased. In such case, the new price will benefit those shareholders that have already accepted the original offer. In 1993, the CNV will continue to focus on the protection of investors, which is one of the pillars of a successful capital market.

Regarding the new investment fund law, Argentines have traditionally made two types of investments. They either had dollars in a bank or dollars under the mattress. In the last two years, however, investments in local currency and in equity in the local stock exchanges became relevant. In order to help small investors participate in the stock market, diversify their portfolio, and reduce their risk, a new investment fund law was enacted. In summary, the law regulates the terms and conditions to form and operate an investment fund. It requires: 1) a management and administration company; 2) a company or financial institution acting as a custodian; and 3) written investment policies and objectives duly approved by the CNV. The management and administration company, the members of its board of directors, and the controlling shareholders of such company must be totally independent from the custodian of the investments. The management company, the custodian, and their executives are jointly and severally liable for all the damages their wrongdoings cause the investors.

In addition, according to restrictions set forth by its own policies, the fund cannot exercise more than 5% of the voting rights of any company, hold commercial paper or certificates issued by a corporation in excess of 10% of its liabilities, invest in the custodian or manager's equity, or hold government bonds or treasury bills of the same kind in excess of 30% of the fund's total portfolio. Investment funds will certainly be the key vehicles for granting small and medium companies that go public access to financing.

That is a very positive approach, but with interest rates going down internationally and no devaluation alternative, Argentina has moved to a stock market. The stock exchange moved from sixty million on an average to a peak of 160 million in all of 1991. At the same time, the CNV realized that new unsophisticated investors were in the stock market with the idea that stocks were to the 1990s what the dollar was to the 1980s. That is, a way to make quick money. So, in order to solve those problems, the CNV issued a regulation easing the requirement for companies to go public. At the same

time, a section on the market was created so that a company that is not a public company, but has a good project, can list that project in a section in the stock exchange and, by doing that, get the venture capital it needs to go ahead with the project.

Finally, one of the problems of Argentina is that many of the pieces of the company are family pieces and the families do not want to lose control of the company. So, the exchange commission issued a regulation allowing companies to issue non-voting stock as a way to solve the problem. Regarding the protection of investors, the CNV issued rules against insider trading and misleading advertisements. Now, the members of the board of directors of the company and the senior management of the company must notify the CNV on their holding of stock and their intent to sell that stock on a mass basis. The CNV has also regulated tender offers. Previously, tender offers were not regulated in Argentina. Now, once published, they cannot be changed, except that the price can be increased, in which case the new price also benefits the stockholders that have accepted the cash tender offer. Finally, and very importantly, any new issuance of securities requires a rating by rating companies. This is very important because investors will know what kind of risk they are taking. On the other hand, the rating companies are charging 60% per 100 thousand dollars to do a rating. In order to diversify the risk, investors have joined investment funds.

Regarding convertibility, as a logical consequence of the convertibility of the peso, the central bank launched new regulations allowing the opening of checking accounts in dollars. Now, it is possible to cancel a dollar obligation by paying with a dollar check draw against a local bank.

Let me turn to the Deregulation Decree. In Argentina, basically everything you wanted to do required permits, government approvals, stamps, lines, going from one office to another, and paying for nonexistent services. Many of these remain, but the Deregulation Decree is a positive step forward. I want to concentrate on two areas: ports and services.

Until recently, ports in Argentina were some of the most inefficient and expensive in Latin America. This was mainly due to regulations providing the unions and the workers of such unions unbelievable privileges and benefits. In order to break such privileges, the government enacted Decree 817/92 which made several changes. First, private companies may own and/or operate ports in Argentina, subject to prior approval from the government. All ports presently owned by the government will be privatized or transferred. Second, the port authority, Administración General de Puertos, will be liquidated as of the date ports are privatized or transferred to third parties. Third, requirements to apply for a license to operate a vessel under the Argentine flag were simplified. Fourth, local ship-owners will be free to hire personnel of any nationality and to determine, independently, the number of people needed to operate a vessel. Fifth, captains experienced in

navigating in Argentine waters are free to determine whether they need expert pilots to help them in certain difficult waters and when entering into ports. This eliminates the mandatory use of those experts. Sixth, towing fees are now freely negotiable between the parties, as the use of any mandatory fee schedule has been eliminated. Seventh, all regulations affecting the free negotiation of agreements for the discharging and dispatch of cargo were abrogated. Furthermore, any company is now authorized to use its personnel for the discharge of cargo. Eighth, all labor laws and regulations affecting the productivity or management rights to conduct the company were temporarily suspended and new collective bargaining agreements will be negotiated with the workers. In accordance with Decree 817 and to complete the process, the government must enact new rules replacing those abolished with the limited purpose of preserving the safety of navigation and the environment. Those regulations are still pending.

The government also is trying hard to reduce the cost of professional services in Argentina. Lawyers are being affected. Now graduates may freely provide services throughout the country without restrictions imposed by local bars or professional organizations. Also, fees are freely negotiable between the parties, because mandatory fees were abrogated. Parties to litigation may reduce by half the cost of expertise under the new auctioning system provided by the law.

I have seen many positive things happen in Argentina in 1992. It is positive that tax on income remains at 30%, with no taxes on dividends, that the stamp tax at the national level was eliminated, that the tax on assets will be eliminated, and that there are no permits required for foreign investors to make investments in the country. However, there are many things which still must be accomplished. I want to concentrate on those.

It is no secret in Argentina that the government is trying to start a procedure to amend the Constitution. It is no secret either that the main purpose of that — the only purpose — is to permit the re-election of President Menen. I am frankly opposed to the amendment. I think that there will be elections in Argentina for the House of Representatives and the Senate by September or November. On top of that, if the government were to amend the Constitution, the government may be tempted to please the people rather than introduce some of the changes that are necessary to improve the economy, like a reduction in government spending, the reduction of the labor costs, and the reduction of taxes, other than income taxes on businesses and corporations.

In my opinion, there were positive changes in Argentina in 1992 that made the country a more attractive place for foreign investors. I only hope that this trend continues and Argentina receives the capital and technology it needs to increase its exports, reduce unemployment, and improve the standard of living for each of its inhabitants. Thank you.

QUESTION AND ANSWER

HERALCIO ATTENCIO: My name is Heralcio Attencio and I practice international law in Caracas. All of the countries of Latin America, to some extent, have done many of the things that Argentina has done. But what I have not been able to understand is why the Argentines, more than any other nation in Latin America, have been able to translate all these effects into high purchasing power abroad. That is said in the sense that the Argentines now feel that everything outside Latin America is so cheap that they are buying all over the world, despite the fact that the other Latin American nations feel that, with the constant devaluation of their currencies and high inflation rates, their purchasing power abroad and the translation of their currency into dollars is less. I have not been able to understand that.

JORGE D. ORTIZ: That is a very good question. It focuses on one of the main problems of Argentina today. The answer to your question is that overvaluation of Argentine currency is a serious problem. We are riding a huge trade deficit, and everybody is very concerned — not only in Argentina, but also outside of Argentina. I was in New York at a meeting on a big acquisition. The first question that was asked was, “When or is there going to be an evaluation?” The answer was, “Who knows?” It is a serious problem, and you are absolutely right.

CLYDE E. MCFARLAND JR.: With regard to your recommendations to make improvements in Argentina, you focused on lowering the labor cost. What do you seriously think could be implemented?

JORGE D. ORTIZ: There have been several discussions on that. One of the discussions concerns the reduction of social security payments. Currently, for every dollar in salary you pay, you have an additional fifty cents in social security contributions. I was in a discussion with a Taiwanese client, and when we reached that point, he said, “It doesn’t make sense. I cannot pay. We cannot afford that cost.” So the reduction of social security contributions is one of the issues that could be a focus. There are also several government taxes on salaries, including a mandatory 13% salary tax. So, there are several points that you can attack if you really want to address labor costs.

ARTURO ALESANDRI: I would like to ask about the pension funds. I understand there is legislation pending in Congress. What is your view as to this legislation, and, are the private pension funds going to co-exist with the current social security scheme? How is that going to work?

JORGE D. ORTIZ: Arturo is interested because the Chileans are getting a lot of business in pension plans now that Argentina is basically trying to follow the Chilean system that worked very well. I mentioned before that for every fifty cents of every dollar we pay in salary, 26% of that fifty cents goes to a pension system that is paid for and will be provided by the government. The national pension system is broke, so everybody knows that

nobody will be able to collect what the government has promised. It was 82% of the salary at the time of retirement. So, the bill presented to Congress, and which has been under discussion these last few months, is that the government will keep 16% of that 26% and would provide a minimum pension. They are talking 400 or 500 dollars, which is very small. The remaining 10% that the employee pays will increase to 11%, and that amount will be deposited in a private pension company selected by the employee. The employee will have the right to move from one company to the other the way it is done in Chile, with obvious restrictions so that you cannot move every week. After the age of retirement, the employee will receive a pension that will depend on the results produced by this investment. The opposition radical party is against enacting this law, and there have been a lot of negotiations. I believe that it will be enacted before the end of June.

CARLOS E. BERTAÑO: From the neighbor to the northern side — about the monopoly, you mentioned that one of the criticisms of this program is that industry will go from a state monopoly to a private monopoly. What is being done about competition? Do you have a competition law? Can you tell us more about that?

JORGE D. ORTIZ: In Argentina, frankly, I have not seen a lot of enforcement of the anti-trust laws. I have not seen it at all. I think that it will be necessary and it is critical. Some of the monopolies that resulted from privatization cannot be changed due to the conditions under which the investor made the offer and purchased the state-owned assets, so they will not be changed. But, I expect that between this year and next year there will be new legislation fostering competition. I think it is very important.

CARLOS BERTAÑO: The legislation that you have today in Argentina on this matter does not work. If you go back in history, it never worked?

JORGE D. ORTIZ: It never worked, no.

CARLOS BERTAÑO: There were some studies going on about a possible competition law. What happened to that?

JORGE D. ORTIZ: Frankly, I know there is a discussion going on, but I have not read the bill or any kind of draft of such law.

CARLOS BERTAÑO: There is nothing in Congress, as far as you know?

JORGE D. ORTIZ: Not that I know.

L. JANÁ SIGARS: The privatization, in some cases, was not really privatization because some of the companies, Aerolineas, for example, were sold from one state entity of Argentina to Iberia, another state entity in Spain. So, I do not know what you would label that. A state-to-state transfer or something like that? On the anti-trust side, I know that Venezuela has recently enacted some pretty comprehensive legislation and had a commission that went to the United States, Canada, and the EEC to study it. They spent a lot of time there, and they had an economist as well as lawyers and business people, and they came up with a pretty comprehensive set of rules

and regulations. Of course, they are just now being implemented, so it is too early to see the effectiveness.

QUESTION: Mister Ortiz, one of the problems of Mercosur, specifically in the legal area, is that neither Argentina, nor Paraguay, nor Uruguay has an effective consumer protection law. Is there any bill before your parliament to show that you have sorted out this delicate situation?

JORGE D. ORTIZ: You are right. Argentina does not have anything similar to what you have in Brazil, but we are very glad. I saw, and my American colleagues know, that the consumer protection codes in Brazil created tremendous problems for all companies. We have had several serious meetings, and I hope — in fact, I recently wrote something about my hope — that Argentina does not enact anything similar to that legislation. I hope that modernization of legislation between Argentina and Brazil is made the opposite way from that of Brazil, which obligates the consumer protection code.

DAVID TEICHMANN: Jorge, I found your presentation very interesting. Thank you. I have just one quick question — one of the problems that I have seen over the years — and I expect everyone has similar observations from his or her own personal experience — is that one of the reasons a lot of the positive changes do not continue, and that we have these vicious swings and cycles, both politically and economically, and, of course, to some extent socially, is that there is a lack of an institutional framework which allows the positive changes to be retained, maintained, and reinforced in a way that creates stability. What steps do you believe are currently in progress in Argentina to bring that institutional stability to enable a continuation of the positive trends, keeping in mind that Menen may not be around after awhile? He largely has been responsible for this happening.

JORGE D. ORTIZ: I think that is a very good question. The key to stability is to sell the new ideas, privatization, and positive trends to the people. You have to be able to sell it to as many people as you can because only by doing so can you have the certainty that these same policies will continue. I think Chile did remarkable work in that regard. It moved from a military government to a democratic government and was able to maintain the same policies with the full support of the people. I think that is the only way.

QUESTION: Is there any truth to the rumor that Argentina wants to backpedal its way out of Mercosur because of its trade imbalance with Brazil, and/or the fact that President Collor de Melo, who helped personally push the agreement, is, as we say, right now under wraps?

JORGE D. ORTIZ: Alfredo mentioned something about that. What I do know is that Argentina is very concerned about the trade deficit that it has with Brazil, and that is a problem that needs to be solved. So, as to whether Argentina is going to pull out of the Mercosur, I think there is commitment

on the Argentine side. I was lucky enough to be invited to the meeting of six presidents and I saw the working committees and everything. Everybody was very enthusiastic to continue working on Mercosur.

B. Mexico

EDUARDO GALLASTEGUI ARMELLA²⁰

Well, first of all, and before starting my speech, I would like to share an experience I had in Detroit a couple of months ago when I went to give a speech regarding legal aspects of doing business in Mexico. It was a very qualified attendance, just like this, and the speaker who spoke just before me was giving an overview of Mexico and was telling the attendants about all those opportunities we have in Mexico, obviously trying to stimulate investment in Mexico. He mentioned several advantages and then said, "Don't worry, in Mexico everybody speaks very fluent English." Probably you will imagine how I felt when my predecessor said that. I was trying to think what to say because I was going to be the first proof about what he was saying. Well, I got an idea and said to the audience, "I am sorry, but I learned English before NAFTA. So hopefully you will keep it in mind and you will forgive me for my English and pronunciation."

I would like to thank the Florida Bar for this opportunity to share with you all the significant efforts that the current Mexican administration has carried out to promote Mexico's integration into the global process of modernization. In fact, the current state-of economic development is the globalization of production and trade. In light of that, President Salinas is maintaining a course towards modernizing the Mexican economy through different means. First, to impose lower trade barriers; second, to open more opportunities for foreign investment; and, third, to implement a larger role for private industry.

The world is changing from the maquila process, which has been successfully accepted by the Mexican government through the industrial conversion which allows a company access to new products, new technology, and new components. Mexico and the current administration have taken several steps to solve the problems that the country faced in the last decade. Some of those problems were: the development base on natural resources, the incredibly high external debt, the lack of high tech, a growing trade deficit, strong government participation in enterprises, large budget deficits, and unfavorable economic and macroeconomic environments.

In light of that, President Salinas has given instructions to adopt several

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measures, especially keeping in mind the bureaucratic and, most of the time, extensive procedures regarding the operations of companies in Mexico. I would like to mention some of the steps which have been pursued significantly by the Mexican government. First, Mexico, as you all know from the speeches this morning, has put into practice an important process of liberalization, including GATT in 1986, regional agreements like the free trade agreement with Chile, negotiations with the United States and Canada, and the NAFTA frame. Other steps are the improving of public finance, reducing the public sector deficits to zero, improving the inflation rate to give the GNP sustained growth, restructuring the foreign debt in 1988 (94 billion then and 73 billion in 1992), and liberalizing trade to eliminate 98% of import permits and lower tariffs to an average of 8%, with the highest at 20%. There also was privatization of public enterprise. We can mention the most important examples, such as TELMEX, the airlines, and the banks. We estimate that the total number of enterprises that have been privatized is about 900. Not more than fifty enterprises are still under government control — thus, there is an aggressive process of deregulation.

We also estimate that about 145 regulation processes have taken place since 1989 in the areas of transportation, services, fishing, petro-chemicals, textiles, and telecommunication. Importantly, the deregulation of the transfer of technology also has taken place. You probably remember the times not so long ago, about 1990, when transfer of technology agreements were subject to very strict control by the government, not only with respect to the content of the contracts, but also with respect to the percentage of royalties to be paid. Now these restrictions have been deleted and technical assistance contracts can be executed freely between foreign and Mexican parties. There are no restrictions regarding prior approval or authorization regarding the royalties figure.

An important issue was improving measures to enforce intellectual property rights in Mexico. This has been very well accepted by the international community, unlike the domestic one. It is incredible, but of the total number of patents registered in Mexico, no more than 5% are registered by Mexicans. This is something which was not used often by Mexicans, but used very often by the international community, particularly private companies.

There also was a program to set a tax rate of 35%, and dividends are not taxable if the taxes were previously paid on the base of the corresponding company. There is now immediate deduction of present value for depreciation purposes. The value-added tax is now only 10%, and it is important to keep in mind that exports and sales to maquila industry are tax exempt. In addition, there has been diversification of higher value-added exports. We estimate that there were about 30 billion dollars of exports in these items in 1992, of which 60% were manufacturing goods.

In 1989, as you well know, the new regulations of the law to promote Mexican investment and to regulate foreign investment were published. This was done to recognize the changing diversity of Mexico's business and industrial sectors. These new rulings include a classification of economic activities that clearly identifies projects subject to one form of limitation or another and differentiates them from those not subject to any restrictions at all. The vast majority of activities considered for establishment in Mexico are unclassified and represent approximately 78% of Mexico's GNP. A narrow range of activities is classified, and includes those once restricted to the public sector, such as petroleum, basic petro-chemicals, railroads, electricity, nuclear energy, telegraphic services, and mail. Others are reserved for Mexican investors, which in most cases means foreign investors may not participate. We find within this class radio and television, air and auto transportation, administration of maritime, train, and fluvial ports, and trade by retail of liquified gas, fuel, and gasoline. Another class opens to foreign participation up to 49% of the capital stock. That list of unclassified activities has been substantially expanded, and that flexibility is now provided for in consideration of projects involving classified activities.

As I said before, these classes are just inflexible in principle, but especially in the third class, the one accepting foreign investment up to 49%, what we can say is that the investors always have the resources to get specific authorization from the National Commission of Foreign Investments. The applicant has to prove the benefits that its project will bring to the country, and these applications are evaluated considering, among other factors, balance of payments, investments and fixed assets, establishment in Mexican "growth zones" — not just in Monterrey or Federal District or Guadalajara — and the creation of a new workplace using high tech. What I can say is that, if those requirements are satisfied, then at this time the National Commission of Foreign Investment is approving the authorization of the application submitted to it. It is a different time. I remember that no more than three years ago when we were dealing with these types of classified activities, it was really difficult getting an authorization from the National Committee of Foreign Investment. Now we can say that it is more of a problem of timing than resolution. In other words, if the file is completed and these arguments are covered, then it is almost certain that the commission will approve the project. Obviously, it will not be so easy and so fast like we were talking about a project regarding a known classified activity, which is automatic. Then it just takes the time involved in preparing the bylaws and getting the deed signed by the notary public. We can say now that it is more a question of time than any other.

Additionally, in these rulings, and not only with the ruling but also with the attitude of the foreign investments authorities, new targets have been pursued by the Mexican government. I will mention just some of them,

beginning with provisions. The rulings include provisions that allow foreign investors to increase their holdings in existing operations to a majority share under clearly specified conditions. This enables foreign firms to enter into joint ventures with Mexican companies in certain business sectors previously reserved for domestic investors. That is what I was saying. Now we have some information regarding approvals in the area of telecommunications and a lot of moves are taking place now in Mexico to begin authorization in the transportation area. Nothing official has been issued yet, but pretty soon we expect we will have something in this area. The rulings also include provisions allowing for the creation of a new financial instrument that expands the opportunities for foreign investors to participate in the Mexican capital market, and which allows for the greater internationalization of the market. As a matter of fact, I think that this item offered so nice an opportunity to the foreign investor that I have no doubt the main part of the foreign investment in 1992 was channeled through the stock exchange market.

Provisions also significantly expanded investment opportunities for foreign companies in Mexico's tourism sector, and established conditions for extending the term of property ownership. As you also probably know, there is a constitutional restriction on foreigners acquiring real estate in what we call the forbidden zone, which is fifty kilometers on the coast and 100 kilometers on the border. In this area what the Mexican government is doing now is allowing Mexican corporations, even though they have foreign investors, to acquire real estate in the forbidden zone. In other words, in the past, if you had a Mexican corporation with foreign ownership, then it was not possible that such a company could acquire real estate in the forbidden zone, even though it was a Mexican company. Now it is changed and, probably together with enforcement of NAFTA, Mexican companies with foreign participation will be allowed to acquire real estate in the forbidden zone. This is very important. We are talking about the border, which means manufacturing facilities and maquila projects, and we are talking also about the coast, which is very important in, you would think, tourism projects.

New changes in the Mexican foreign investment law are expected by not only Mexican corporations and individuals but also the international community. We think that, first of all, all the commitments previously imposed by law on investors in classified activities, as well as those on nonclassified activities, will be deleted. Obviously, under the framework of NAFTA, the percentage of participation in the former reserve activities for the state or for Mexican investors will be liberalized on a progressive basis. What is important to know, and I am saying this even for those companies who have just been incorporated, is that it seems like by the end of the first year they will be subject to the review of compliance of department commitments by the National Commission of Foreign Investment. That

obligation will be deleted and then those commitments will not be enforceable anymore.

These are some of the major issues that are taking place in Mexico regarding expectations of foreign investments law under the framework of NAFTA. I just want to finish this participation saying that in fact a certain type of political domination has allowed Mexico to reach a relevant growth during the Salinas administration. While that is true, at the same time there are representatives of the private sector or the private services area, like in my case with a law firm, who feel the obligation to give to everybody a real picture of this. Mexico is still a country of opportunities, but it is very important that foreign investors coming to Mexico think it is a place to get a geographically convenient position to export products and really contribute to the Mexican economy. We are no longer in the times where foreign investors were just coming down to Mexico and trying to grow with the base of the domestic resources and trying to place their products only in Mexico. You need to keep in mind that, if we improve the flow of foreign resources to Mexico, then we will have more real growth in the economy, which will allow the Mexican economic atmosphere to be more convenient for foreign investors.

C. Chile

ARTURO ALESSANDRI-COHN²¹

First, I would like to thank the Florida Bar for having invited me to participate for the first time, and I hope not the last, in this seminar. It is really a privilege to address such a qualified audience and also it is a great responsibility after the great comments we have heard about Chile yesterday and today. I will certainly not correct those comments.

First, I would like to make a few introductory statements about economic and political matters dealing with Chile. One could be tempted to look at Chile and talk about a miracle. However, I do not like to talk about miracles because miracles are usually done by only one entity: God. I think that in the case of Chile, the entire country has contributed to the remarkable economic performance we have had in the last decades. In all fairness, I should say that Chile is currently harvesting and benefiting from the major surgery that the country underwent from the outset of the military regime. I would say that it was then that the rules of this game were established. But this, of course, was not an easy task. Chile had periods of social unrest, very high unemployment, and very drastic recession periods. I think we have

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learned that what we have today is not a coincidence. We have worked very hard to achieve these goals. I take pride when other countries talk about Chile, and other people indicate that my country is a showcase in many areas, not only for Latin America but even for countries in Eastern Europe. As a matter of fact, our Chicago boys keep quite busy nowadays. They are in demand from several governments and academic institutions to talk about Chile, to talk about the experience of these reforms and pension funds, and several other successful schemes that we have created.

As early as 1974, Chile formally left the Andean Pact when we realized that it was incompatible with a free market scheme, and the fact that lowering tariffs was not possible under the Andean Pact. We received much criticism at the time for leaving the Andean Pact. However, I think it was a sound decision, and among other things it allowed the United States to enact the foreign investment statute, the so-called DL 600, which is still enforced in Chile. I think this is a very good example of stable rules that have been enacted for a long period of time. Ultimately, foreign investors are looking for stability, for schemes that work and that can be trusted, and, in a nutshell, rules of the game that are not changed very often. I think that Chile changed the Andean market, and rightly so, for the rest of the world. I think it was a forward-thinking decision, and that we made the right changes at the right moment. In many ways we took the lead with regard to our neighboring countries and the rest of the countries of Latin America.

With this exceptional economic record inherited from the former administration, the current government has performed remarkably and fortunately has continued the basic policies that were established and which have proved to be very successful. As a right-wing politician said in Chile a few months ago, it is better to have a center-left president and coalition applying the economic program of the center-right than to have a center-right president trying to materialize its program and have the current coalition as an opposition. I think the fact that the governing coalition has not applied its economic program shows that they realize that the economic scheme does in fact work. It is what has allowed, for example, the current administration to achieve outstanding figures last year. Inflation is down to 12.7% and this year we expect 10%. Unemployment is at a low 4.5%, the stock market continues to perform and allows investors to have a more than reasonable profit, and, most importantly, I should add, the capital inflows have continued.

I think that the perception of Chile abroad at times has been better than the one that we Chileans have had domestically. The amount of foreign investment continues to flow into Chile, and recently the problem for the central bank has been an excess of dollars, to the point that there is a forced 20% deposit on all foreign loans that are coming into Chile. But most importantly, what has happened in Chile is that a consensus has been

achieved among all the political parties that there are certain rules, the basic rules, and that this new game really works. There is no point now in discussing or arguing whether we are going to have an open economy or closed economy, whether the government is going to run the telephones, run the power plants, and so forth. Rather, the discussion has centered around distribution of income and the most efficient ways to cope with the social needs.

Additionally, the regulatory agencies have been strengthened in this period. Not only have we loosened the restrictions, opened up the economy, and invited foreign investment, but the private sector today has, I think, some very clear signals from regulatory authorities and agencies, that go from the antitrust commission, banking, securities, pension funds and even the new private health institutions. In his many trips abroad, our president has acknowledged the fact that his economic achievements could not have happened had the previous government not made the economic reforms. Domestically, of course, the story changes somewhat because of political reasons, but the message that Chile is giving to the rest of the world and the experience within Chile is that this new game and new rules will be maintained.

One of the interesting discussions that is taking place currently in Chile is about the lowering of some taxes that were increased three years ago as a political compromise between the government and one of the opposition parties. These discussions revolve around lowering the VAT from 18% to 16%, lowering the personal income tax, and lowering the first category tax on accrued taxable income from 15% to 10%, whether distributed or not. The government argues that the social debt, as they call it, cannot be paid with less revenue. On the other hand, the opposition insists that the government has to honor the deal of lowering these taxes, and that the financing of the social debt can be paid with economic growth — this year between 5% and 7% — and further privatization.

Some of the clouds on the horizon that could be mentioned are the poor performance in further privatizing some companies and in enterprises like oil drilling and refining companies, as well as railroads, ports, and sewage companies.

I would say that the political tide in Congress has been a very important factor to underline and to strengthen this stability. There is always temptation to change the constitution, to amend it, and that, of course is going to be decided this year because we have presidential elections, as well as the elections of the full House and half of the Senate. December of this year we will have these elections, and for the time being it looks like Mr. Eduard Frei, Jr., the son of former President Frei, who is a Christian Democrat, may be elected the new president. He has yet to be elected in a convention of the governing coalition. The socialist Ricardo Lagos is his

principle opponent, the Communist party on the extreme left has its own candidate, and to the center-right there are also two principal parties which will be disputing the convention. But, I expect there is going to be one candidate representing the center-right and another representing the center-left of the governing coalition.

Also, I would like to address the competitiveness of Chilean companies. The new scenario that we are starting to see in South America and Latin America, in general, is that Chilean companies are taking advantage of the privatization process and investing with foreign or local partners in Argentina, Peru, Ecuador, and other countries. I would like to point out that Argentina is probably the most interesting case, because investments there cover a very wide range of areas, going from power plants to power distribution companies and, in the future, hopefully pension funds, insurance companies, computer hardware and software, and even supermarkets, disposable diapers, and chocolate companies. I think this really is what integration is all about. On the other hand, Argentina is investing heavily in Chile. There is a big gas project being performed between Argentina and Chile which will provide a tremendous amount of gas to Chile. Argentina has also invested in Chilean cellular phones and telecommunications, which I think, in short, is showing that in Chile there is a new mentality, a competitive mentality. The companies — big companies and even small entrepreneurs — I think are making a very relevant contribution to the growth of the export-oriented economy, and in fact are specializing in their own fields and investing abroad. Technical skills and the quality of education are two very important issues which remain to be improved in the coming years.

Now, going into more specific laws and regulations that were enacted last year, I would like to touch on a few which are from my point of view the most important. I think the fact that Coleco, which is the copper company that owns the major copper mines, has been authorized as of May of last year to dispose of its copper deposits that are not being exploited. This is an important signal. Coleco can even go into joint ventures with local and foreign partners. Looking back on the record of expropriation some decades ago of these big copper mines, I think this has always been a political issue, the fact that these nationalized companies remained public-owned enterprises. But this, I think, is the first step in the right direction, allowing foreign investors to enter into agreements with Coleco.

In May of last year, the central bank set out conditions under which financial and industrial institutions could obtain financing through the issuance of bonds in foreign currencies. The convertible bonds were specifically excluded from this amendment. But only five months afterwards, in October 1992, the central bank included special provisions, including convertible bonds. I think it is interesting to say that again the pioneer is the

Chilean telephone company, which has already been authorized to issue 200 million dollars worth of convertible bonds. This action follows a highly successful trend that started with the American Depositor Receipts in 1990, which was a very successful operation and transaction. Those ADR's are still being listed and traded on the New York Stock Exchange. I also would like to mention that as of May of last year, the pension funds were authorized to invest abroad. Last year, Raul Toro, my partner in this seminar, closed his participation by saying that he thought that regulations allowing pension funds to invest abroad were imminent. I can say now that he was right because less than a year went by and the pension funds were authorized to invest in securities issued by foreign entities' central banks, as long as they are traded daily on international markets. The securities must receive an A rating from the Risk Classification Commission and must be purchased under a formal secondary market through authorized intermediaries.

There also are interesting changes to the debt-equity rules, which were originally enacted at the end of the 1970s. The debt-equity rules as an exceptional mechanism have been amended a few times, but I think last year the early repatriation of profits is allowing investors for the first time not to have to wait for any period of time. Rather, foreign investors are entitled access to the official currency market and can make premature payments for all the profits that may have accrued. They may do this as long as they pay a commission to the central bank equal to 3% of the original amount of the investment made as a debt-equity swap. For the first time as well, foreign investment funds which made investments under Chapter 19 are entitled to the same rights as mentioned.

Another interesting amendment took place last June when the Superintendency of Securities and Insurance issued General Regulation Number 41, setting forth the requirements for the registration of securities in Chile. The regulation is applicable to foreign issuers who wish to list their shares in Chile. I had a chance to participate in the conversations and discussions with the Superintendency because there was a foreign investment fund that wanted to list its shares in the Chilean Stock Market. Most interestingly, the Chilean authorities were convinced that Chile's exchange commission's rules were not strict enough to start this new phase of allowing foreign securities to be listed and traded in Chile. So, this general rule came out, stating that the foreign issuers must be subject in their country of origin to the highest supervision of securities commissions. The regulation also required that an agreement or memorandum of understanding should exist between the Chilean authorities and the respective supervisory entity of the foreign issuer, wherever its shares are registered or publicly traded. These foreign issuers must establish an agency or branch in Chile if they want to trade and list their shares. This is obviously a requirement that was sought for the rest of

the countries where Chile does not have any detailed knowledge of the requirements of those countries.

Finally, I would like to touch on a proposed amendment to the foreign investment statute, that is, the Decree Law 600. Very recently Congress approved the amendment of the Decree Law 600, which is consistent with the trend of loosening the restrictions on the repatriation of capital. The two major amendments are the following. First of all, the three-year term for repatriation capital has been reduced, or will be reduced once this bill is enacted, to one year. Hot money is still an issue, and both the executive and Congress decided that capital should stay in Chile for at least one year rather than three years as was originally required. Secondly, the amendment reduces the fixed ten-year overall income tax of 49.5% in variability option to a mere 42%. It should be noted that currently the overall income tax rate as applied to nonresident foreign investors is 35%. But under DL 600, there is the option of inviability of ten years, and, as I said, from 49.5% which is a historic figure which was then considered to be reasonable, it will be lowered now to only 42%. These amendments I believe are the most important ones. I don't want to touch on other amendments that took place in Chile in the previous year. I am trying to concentrate only on the last year. I wish to thank you for your patience and attendance.

QUESTION AND ANSWER

QUESTION: We have been hearing constantly about the repatriation of funds into Chile and we heard that it was starting to happen in Mexico. Is that true? What evidence do we have that it is happening? What is the extent of the inflow of funds that were quiet capital in the 1970s and 1980s?

ARTURO ALESSANDRI-COHN: Well, I think that from the Chilean point of view, the trend has been, as I said, to loosen up the restrictions. The excess of dollars has allowed the central bank to be quite liberal. We have not, however, gone to the point of establishing a free currency market. I think we are heading in that direction, of course, but our economies are still very dependent on what happens abroad and do not have, I think, the strength or the size, and I think there are still some years to go before we see in Chile a free exchange market. We still have certain controls. It seems quite reasonable to have loosened these repatriation restrictions that I have described recently.

EDUARDO GALLASTEGUI ARMELLA: In the case of Mexico it is a reality. There are two reasons why the capital came back. First, a lot of Mexican people needed money to pay the high prices for the banks, which is very significant in terms of the whole frame of the Mexican economy. If you consider that some of the banks were paid even 4.7 times the book value, you will understand there was a need for a lot of money to cover such prices.

Secondly, the current administration has obtained a double success in terms of the Mexican economy. First, it reduced the inflation rate to 11.8% for 1992, and we expect 9% for 1993. Finally, there has been a stabilization of the exchange rate. So, obviously those factors have stimulated Mexican people to repatriate their capital.

QUESTION: The ex-president of Venezuela and future candidate said on November 27 of last year, when the failed coup attempt occurred in Venezuela, that the showcase of democracy, which was traditionally Venezuela, had been broken. It had been broken not because of economic or legal or political factors, but basically because of sociological factors. I would like to ask you, Arturo, what are some of the sociological restraints in Chile? We talked a lot about the positive effects of the reform and actually Chile has been at the reform since 1974. I would like to know some of the sociological restraints at the moment.

ARTURO ALESSANDRI-COHN: Very interesting question. I did not stress, perhaps, that the shift from an authoritarian regime to a democratic regime had been a very smooth process in Chile. Perhaps most of the success in this transitional period is due to the fact that there was a very sound economy underlying this process, and there was, I would say, neither major social unrest nor major labor conflicts. However, I think that the sociological aspects can be traced back to the 1970s.

Chile lived for some time through some very hard, hectic days of confrontation. Political confrontation and uncertainty, uncertainty of losing your business, personal uncertainty, violence, and the lack of, I would say, stable institutions, which led to the military overthrow of Allende, explain in part why the military regime started with a great deal of popular backing. Of course, this changed over time. We can discuss the political positions of the effects and the length of the military regime, the human rights problems, and so on. But I think that Chileans and Chilean workers, after some hard times of unemployment and after working for the state, were forced to really seriously start to think about their future. People were able, if they worked hard, to improve their standard of living and their quality of life. I think there was an unbalance.

The economic reforms are very good, and that, I think, is the basic ground for a successful popular capitalism and many other sociological phenomena. The fact that many public employees received shares from different companies when they left the public sector was a novelty — it was absolutely new. Then some of the companies were privatized, and the workers received shares, and they had the option to buy shares. They are now receiving dividends. They care about the company. I sit on several boards of large companies, and I see that the arguments, that the dialogues that take place, are much more technical. It is not a matter of the “exploiter-capitalist” versus the “poor lower-class Marxist” analysis. Now they realize

they want to make more money. They want more benefits for their children, and for their health, and they are still struggling for that on technical, non-political grounds. I can see a sociological change.

Foreign investment, for example, is also viewed today in a very different way. It is not the "Yankee Go Home" approach of the 1960s and 1970s. Chileans now can buy in their supermarkets Heineken beer, U.S. beer, even foreign toothpaste. And they, in turn, are also exporting shoes, and indeed an incredible amount of other items. So this opening up, this new mentality, I think, is again a very strong element that to me is a very optimistic view that the system is gradually being accepted by everyone, and it is not a matter of only the educated and rich business community which favors this kind of economy. This new game and these new rules, I think, are being shared by most of my compatriots.

The other interesting and important factor that we have been able, and I think the government has been able, to prove to the rest of the world is that the economic system that was implemented with Pinochet also can work in democracy.

QUESTION: I have a question for both of you. I think the approach is probably a little different in both countries, but environmental issues are big now with our new administration. I wonder if you would each comment on the role that environmentalists are playing in your countries with regard to the development efforts that have been taking place.

EDUARDO GALLASTEGUI ARMELLO: In the case of Mexico, there have been strong strategies to improve environmental protection. As a matter of fact, a specific commission was created to do so. This is a part of a commission controlled by the new Mexican public entity called the Ministry of Social Development. That means that, in Mexico, environmental issues are considered so highly by the current administration that they have been classified as one of the social priorities in Mexico. Obviously, this ministry has concentrated an incredible political power with the Salinas administration, to the extent that even most of the people think that the current Minister of Social Development might be the next president. So, in the area of rules, what I can tell you is that new rules of environmental protection have been polished, and not only the rules, but also the attitude of the authority of enforcing it. In the last year, I think sixty major companies have been closed for infringement of environmental regulations. I think it is a real issue and it is working in Mexico.

ARTURO ALESSANDRI-COHN: In Chile, this is becoming a major issue, particularly because in Santiago, our capital, we have a very polluted sky, and we have already started with unleaded fuel cars. I think there is a major concern also that this issue will be raised, for example, if Chile wished to be part of NAFTA. We have already experienced some constraints from the U.S. copper industry, since our major copper mines in the past did not have

any restrictions in terms of pollution, and thus we were able to produce copper at a lower price. This was viewed in the United States, for example, as unfair competition. So we have learned already that for economic reasons, commercial reasons, and environmental reasons, we have to deal with the problem.

There is, I would say, a very comprehensive bill right now in Congress which is going to start to be discussed quite soon. I think it incorporates most of the major principles that you can see in this country. In other words, it is going to be increasingly expensive to contaminate or pollute in Chile. New regulations are coming out as to disposal of toxics and several products from industrial processes. This also is a concern that, as a lawyer, I am increasingly receiving inquiries about from our foreign clients. I guess they are interested in knowing in advance the orientation of the new bills. We will have, I think, by next year perhaps, new regulations and new legislation in this respect.

