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BCBA Listing Rules On Register Of Negotiable Instruments Amended

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Argentina's Comisión Nacional de Valores ("CNV") on August 7, 2003, issued Resolution No. 14.579 approving an amendment to Section 16 of the Listing Regulations (*Reglamento de Cotización*) of the Bolsa de Comercio de Buenos Aires (Buenos Aires Stock Exchange, or BCBA).

Under the amendment, the register of written negotiable instruments (*obligaciones negociables escriturales*) that formerly could be kept by the issuer, a bank or a securities depository (*caja de valores*) may now be kept only by banks and securities depositories. Thus, the issuer is no longer permitted to keep this register.

The preamble of the CNV's Resolution sets forth that the reason for the amendment lies in an attempt to give bondholders access to the pertaining proof in order to judicially request the payment of written negotiable instruments, as stated in the so-called Transparency Decree (No. 677/2001, Section 4 e).

Background

Following a regulation established by the Argentine Corporations Act, Section 208, which states that corporate stock may be represented either by securities or by written registrations, Law 23.576 of July 19, 1988 (as amended by Law 23.962 of August 1, 1991) establishes a similar provision for negotiable instruments. In this sense, Section 31 of Law 23.576 sets forth that the document containing the issuance conditions of negotiable instruments may establish that they will not be represented by securities. In this case, the negotiable instruments must be registered under the name of their holders in special accounts forming a register kept by the issuer, commercial or investment banks or securities depositories. Under this rule, bondholders are entitled to obtain at any time evidence of the balance of their accounts. The Transparency Decree — mentioned in the preamble of the CNV Resolution — contains a similar provision.

On the other hand, Section 29 of Law 23.576 provides that the securities representing negotiable instruments grant bondholders the right of execution in order to judicially claim the payment of principal and interest and to foreclose the corresponding guarantees. In the same way, Section 63 of the CNV's Resolution sets forth as one of the conditions to be fulfilled by negotiable instruments in order to be admitted to the public offering regime that they shall grant their holders the right of execution in case the issuer falls in default.

The amendment to the Listing Regulations of the BCBA approved by the CNV answers the concrete needs of the market (coming particularly from bondholders), which has seen some misconduct in the crisis that Argentina is facing. In the case of written negotiable instruments, the delivery of the certificate representing the bonds to the holder is the necessary initial step for execution.

During the last few years, Argentina has been submerged in a deep economic crisis which has dragged down many companies that issued negotiable instruments. For the first time since the legal creation of this kind of securities by Law 23.576, there have been a considerable number of defaulted issuers. This situation has submitted negotiable instruments to some "acid tests" about the right of execution contained therein. With the exception of some isolated cases, in recent years the matter related to the right of execution comprised in these negotiable instruments was only a theoretical issue that had encouraged some discussion, mostly belonging in an academic environment.

Court Cases

More recently, this matter has reached the courts, and some important decisions have been rendered:

In 2000, the CNV imposed a fine of AR\$130,000 (equivalent at that time to U.S.\$130,000) on an important corporation that had denied to a bondholder the delivery of the certificate corresponding to its negotiable instrument. The company knew that the bondholder had requested this certificate in order to file a bankruptcy petition, since the entity had not complied with the payment of interest provided in the issuance conditions of

the negotiable instrument. The company appealed the fine imposed by the CNV. In 2002, the Federal Court of Appeals in Commercial Matters, although reducing the amount of the fine, dismissed the appeal, recognizing the right of the bondholder to be given the certificate of the negotiable instrument. The court considered that the company, by refusing delivery of the certificate, had blocked the legitimate exercise of rights granted to the bondholder by law.

In 2001, a National Court of First Instance in Commercial Matters considered that written negotiable instruments, although not represented by securities, shall be deemed as conferring to their holders the right of execution against the issuer. The judge stated that written negotiable instruments, as accounts kept by the issuer or another authorized third party, were examples of the dematerialization process that currently is affecting securities, but this circumstance could not diminish the rights granted therein. The judge dismissed the motion filed by the defaulted company and ordered execution against the same.

Additional Points

In connection with the amendment approved by the CNV's Resolution, two additional points should be taken into account.

In the first place, it should be noted that, although the BCBA is by far the most important stock exchange in Argentina, the new rule implies an amendment to the Listing Regulations of only this particular stock exchange. Therefore, it will apply only to securities whose listing authorization is requested to be granted by the BCBA.

In the second place, the preamble of the CNV's Resolution clarifies that the rule does not have retroactive application. Accordingly, this restriction will be enforceable only in relation to securities authorized for listing by the BCBA from now on.