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## **NEW RULES ALLOW DEFERRED CHECKS TO BE TRADED IN STOCK EXCHANGES**

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Several rules have been recently enacted in Argentina in order to permit that deferred checks (*'cheques de pago diferido'*) be traded in stock exchanges:

- ❑ Decree 386/2003 (the “Decree”) enacted by the National Executive Power on July 10, 2003.
- ❑ Communication “A” 4010 (the “Communication”) enacted by the Argentine Central Bank (*'Banco Central de la República Argentina'* – “BCRA”) on September 5, 2003.; and
- ❑ General Resolution 452/2003 (the “Resolution”) enacted by the National Securities Commission (*'Comisión Nacional de Valores'* – “CNV”) on October 1, 2003.

Checks are regulated in Argentina by Law 24.452<sup>1</sup> (as amended by Law 24.760<sup>2</sup>). This law classifies checks as either: (1) *ordinary checks*, which are payable once presented to the bank (equivalent to a ‘payable on demand’ commercial paper), and (2) *deferred checks*, which are payable on the date established by the drawer (this fixed date implying a term which shall not be shorter that one day and shall not be longer than 360 days as from the issuance date). “Deferred Checks” must be distinguished from “post-dated checks”: The former include both a (real) issuance date and a due date, while the latter bear a date after the date of issue and are payable on or after the stated date (see Black’s Law Dictionary, Seventh Edition). According to this distinction, Section 23 of Law 24.452 states that an instrument whose issuance date is later than the date of its presentation before a bank shall not be considered a check.

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<sup>1</sup> Enacted on February 22, 1995 and published in the Official Gazette on March 2, 1995.

<sup>2</sup> Enacted on January 9, 1997 and published in the Official Gazette on January 13, 1997.

## Decree

The Decree has established a general framework to allow the trading of deferred checks in stock exchanges. This Decree tends to facilitate the access to other sources of credit by small and medium-sized companies, considering that, currently in Argentina, interest rates are very high and access to credit to most players is limited, particularly the smaller ones, is limited.

The Decree also ponders the role of stock exchanges -where prices are formed in an objective and public way- in providing liquidity and transparency to the negotiation of financial assets and in reducing, as a consequence, the interest rates.

The Decree has introduced some amendments to Law 24.452 in order to adjust the nature of the deferred checks to the characteristics of the trading in self-regulated entities like the stock exchanges. For example:

- ❑ Deferred checks may be negotiable in stock markets and self-regulated entities.
- ❑ Primary offer and secondary negotiation of deferred checks shall not be considered a public offering nor shall they require previous authorization.
- ❑ Deferred checks issued as order papers including a '*non negotiable*' clause may be endorsed<sup>3</sup> in favor of the securities' depository ('*Caja de Valores*') in order to be traded in stock markets.
- ❑ Endorsers and other signatories of deferred checks shall not be subject to the securities issuers and brokers' regime.
- ❑ Any transfer of deferred checks to the securities' depository shall not be deemed as a transfer of the ownership interests in those checks or the rights therein.
- ❑ The securities' depository shall hold the checks only in custody and shall make the correspondent operations and registrations arising from their negotiation.
- ❑ The depository shall not be bound by the payment of a deferred check as long as it has been exclusively endorsed for its negotiation in stock markets.
- ❑ Negotiation of deferred checks in stock exchanges shall not create obligations enforceable under the commercial papers' typical judicial action regime, among the parties involved in the transaction.
- ❑ The National Securities Commission ('*Comisión Nacional de Valores*' - "CNV") shall be the regulatory and supervising authority over the negotiation of deferred checks in stock markets and self-regulated entities.

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<sup>3</sup> This constitutes an exemption to the general principle that states that order papers issued with the clause '*non negotiable*' may only be transferred through an assignment agreement.

Taking into account the contradiction that could arise from the rules governing banking secret and the ones that try to protect transparency and full disclosure in stock markets, the Decree has designated the BCRA as the authority with regulatory powers to enact some necessary rules concerning this issue.

### **BCRA Communication**

Following this instruction, BCRA has enacted the Communication mentioned at the beginning of this article, which adapts the regulations of checking accounts and banking secrets to the new transaction mechanism of trading deferred checks in the stock exchanges.

The Communication sets forth several rules relating to:

- ❑ The identification of the checks that will be negotiable in self-regulated markets- for this purpose banks shall provide at the request of their clients especial forms for deferred checks containing the phrase '*negotiable in stock markets (Dec. 386, 07.10.03)*'.
- ❑ In relation to confidentiality and personal data protection rules -at the moment of withdrawing the new forms of deferred checks from the bank- the client shall sign a receipt releasing the bank from any liability arising from confidentiality and personal data protection rules.
- ❑ Disclosure restrictions- the banking secret shall not be applicable to the information provided as a consequence of trading these checks in stock exchanges.
- ❑ Trading of deferred checks issued as order papers with the clause '*non negotiable*' ('*no a la orden*') may be endorsed in favor of a securities' depository for negotiation in stock exchanges and self-regulated markets. These endorsements shall contain the clause '*for its negotiation in stock markets*'.

### **CNV Resolution**

As the appointed regulatory and supervisory authority, CNV has enacted the Resolution (as defined above) which basically states that:

- ❑ Securities exchanges and self-regulated entities that provide for the listing of deferred checks shall regulate the following operations:
  - Deferred checks issued by corporations, cooperatives, civil non-profit associations, mutual associations and foundations in favor of third parties and endorsed to the securities depository.

- Deferred checks guaranteed in favor of the participant partners of a Reciprocal Guarantee Corporation (*'Sociedad de Garantía Recíproca'*) or other entities set forth by Law 25.300<sup>4</sup>.
- Securities exchanges shall provide in their regulations systems for the verification of the absence of formal defects in the deferred checks, the authorization of the signatories and the authenticity of the signature in them.
- The securities' depository shall rule the aspects concerning the custody and keeping of this kind of checks.
- 1) Other features concerning the trading of deferred checks not stated in the Resolution shall be authorized after an analysis of the credit risk involved.

*Alfaro-Abogados is a full corporate services law firm from Argentina ([www.alfarolaw.com](http://www.alfarolaw.com)) with its main office in Buenos Aires and branches in New York, London and Madrid.*

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<sup>4</sup> This law (enacted on September 4, 2000) has the purpose of promoting small and medium-sized companies by the creation or modification of some instruments and institutions and specially stressing the access to credit by these companies.