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NEW CAPITAL MARKETS REGULATORY FRAMEWORK

The recently enacted Capital Markets Law (law 26.831) is the most substantial change to the capital markets regulation since 1968.

It was enacted in order to promote capital markets development in an equitable, efficient and transparent way, protecting the interests of the public investors, minimizing systemic risk and promoting healthy competition.

In order to achieve this aim, the mentioned law expressly states in section 1 that its main objectives and core principles are:

a) To promote the participation of small investors, labor unions, associations and chambers of commerce, professional organizations and all public savings institutions, favoring especially mechanisms that promote domestic savings;

b) To strengthen protection and prevention mechanisms that avoids abuse against small investors;

c) To encourage the creation of a federally integrated capital market, through the interconnection of computer systems from different areas of negotiation, with the highest standards of technology; and

d) To promote the simplification of trading for users and thus achieve greater liquidity and competitiveness.

The enactment of the law 26.831 abrogated any other provision currently in force and eliminated the self-regulation system that used to exist. Currently, any individual that wants to operate in the market must register previously at the National Securities Commission, organism who exercises direct and immediate supervision over the markets.

It must be noted that some of the modifications introduced by the new law reflect the legislature's intention to adapt local regulation, attending to the evolution of corporate law. Among other features it must be highlighted that the law establishes:

a) The possibility of the board of directors to meet in any place in the country (section 7);

b) The validity of non-face to face board meetings (section 11);

c) The possibility of the board, in exceptional circumstances, to make decisions without the required quorum, even unilaterally but ad referendum of what is decided at the next meeting of the board (section 12);

d) The lack of effect of the non-registered shareholders agreements (section 99); and

e) Additional information that the summary of the financial or annual report ("memoria") must contain in order to provide full and clear information that enables shareholders to duly understand the financial statements of the company (section 60).

On the 1st of August the Government finally enacted the expected Decree 1023/13, which regulates further aspects of the law 26.831.

The mentioned decree regulates, basically, transparency issues and full information aspects, while it also seeks to generate lower costs and less complex procedures to access capital markets. In addition to this it incorporates global trends related to corporate governance practices, which have already been adopted by many of the world emerging markets.

It also creates new guarantees to protect investor`s savings and rights while it encourages their greater participation in the capital markets. To achieve this goal it provides clear guidelines, in a simple and easily comprehensible language, with direct access to the companies' information through the advertising mechanisms of the National Securities Commission.

Finally, it must be noted that in order to promote and strengthen equal treatment and participation, it empowers the National Securities Commission with full control over all individuals involved in the public offering of securities.

Among the most relevant aspects regulated by the Decree, it must be highlighted that:

a) It regulates in a more comprehensive manner the system of appointment of overseers and displacement of the board of directors of the companies.

According to the text, the National Securities Commission may appoint an inspector to monitor, observe and supervise the board of directors of an entity if, from an investigation or a complaint made by shareholders or holders of securities representing at least 2% of the capital or of the amount of securities in circulation, it arises an actual or true damage or a serious future risk that would harm their rights. Although the Decree prohibits the overseer to exercise administrative powers, to ensure the correct administration of company it grants him with the power of veto over the decisions taken by the board of directors.

Nevertheless, to respect the entities rights, the Decree clarifies that the decision that establishes the appointment of an inspector or the displacement of the board of directors shall be duly motivated and based on the advice of the permanent legal service department.

b) With the ever-present goal of protecting investors' money, the Decree also establishes the creation of a "Guarantee Fund for Customer Claims" in addition to the "Mandatory Guarantee Fund" which will be made with contributions from the agents taking into consideration the volume recorded by each agent, the number of clients, active accounts, etc.

c) It emphasizes the separation of roles and states while seeking transparency, that risk rating agents cannot be auditors, consultants or advisors of any company qualified by them.

d) It establishes that issuing entities shall encourage participation as shareholders of their employees.

e) It provides that, before December 31 of 2014, functioning markets must have obtained authorization from the National Securities Commission to run.

Seems like a good conclusion to state that Argentina is facing a time of great change, where the Government also attempts to boost the country's growth with the growth of its capital markets and, therefore, it aims to promote and protect investors' participation by creating a highly regulated legal framework.

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