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Developments in the financial markets

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Based on the need to provide comfort to foreign counterparties of local entities in connection with derivative transactions, the counsel of the Chilean Central Bank interpreted on January 23 2009 the various regulations issued up to that date in the context of the latest amendments of the June 2007 Chilean Bankruptcy Law and Banking Law, which related to the set-off of derivative transactions in bankruptcy or liquidation scenarios.

Article 69 of the Bankruptcy Law establishes, as a general rule, that bankruptcy declaration prevents any set-off (which has not taken place by the sole operation of law before the date of the bankruptcy declaration) between reciprocal obligations of the bankrupt party and its creditors, except in the case of *obligaciones conexas* (connected obligations) derived from the same agreement or negotiation, regardless of their different maturity dates.

Before the amendments, it was not clear whether Chilean law would accept set-off of derivative transactions undertaken between the same parties under a same master agreement, although it had been generally interpreted that such set-off should be recognised.

The amendments intended to terminate such uncertainty by providing in a new second paragraph of article 69 that "it will be deemed as *obligaciones conexas*" those obligations that, even being in different currencies, emanate from derivative transactions, such as futures, options, swaps, forwards or other instruments or derivative contracts entered into between the same parties, in one or more opportunities, under Chilean or foreign law, under the same master agreement duly recognised by the Central Bank of Chile, which includes netting provisions in case of bankruptcy or mandatory liquidation.

The Central Bank of Chile may determine the terms and general conditions of the above-mentioned master agreements, to which a bank or another institutional investor is a party, considering for these purposes that master agreements are generally accepted in international markets."

Based on the mandate granted by the law, the Central Bank accepted as agreements for close-out netting in case of insolvency of a Chilean counterparty the 1992 ISDA Master Agreement (in the Local Currency – Single Jurisdiction and Multicurrency – Cross Border forms), and the 2002 ISDA Master Agreement. Such recognition includes any amendment, substitution or supplement of any of the referred master agreements, agreed by the appropriate entities and in accordance with the legislation, regulation and the procedures that may correspond.

The Central Bank, however, interpreted the amendments as also granting it an authority to regulate what events of early termination would be permitted under the master agreements for netting regarding banks and institutional investors, prior to their mandatory liquidation or bankruptcy declaration.

According to current regulations issued by the Central Bank, parties may freely agree on any early termination events, but netting as a consequence of early termination events different from those specifically approved by the Central Bank will be suspended if certain actions have been applied to, or taken by the applicable administrative authorities in respect of, the corresponding bank or institutional investor.

On a separate matter, in order to boost investment in Chile, different laws have been recently enacted:

Law 20,326 (published in the Official Gazette on January 29 2009) reduced the stamp tax applicable to loans disbursed during year 2009 to zero, and for loans disbursed between January 1 2010 until June 30 2010 (both dates inclusive) to half of the applicable rate;

Law 20,343 (published in the Official Gazette on April 28 2009) introduced various amendments to the Chilean Income Tax Law, which in summary and among other matters: (i) sets a special treatment for capital gains obtained in the sale of certain publicly-offered debt instruments, allowing an exception to paying such tax if certain requirements are met; (ii) sets specific rules for determining the taxation applicable to securitisation of future cash flows; (iii) extends the application of a 4% withholding tax rate applicable to foreign banks and financial institutions to loans granted from abroad by foreign insurance companies and pension funds subject to a specific regulation of the Income Tax Law; and (iv) modifies the manner in which interest on certain publicly-offered debt instruments will be accrued and thus how such interest shall be recognised as income by the holders of those instruments.

In the corporate governance field, the latest reform promoted by the government with the intent of increasing access to relevant information of a company, avoiding insider trading among other practices and strengthening the rights of minority shareholders, was approved in general by the senate on April 21 2009 and is currently under consideration of specific commissions to be later submitted for further discussions by the senators.

All these regulations have been embraced by the different players involved at a time when project financings in the Americas have decreased during the first quarter of 2009 by 69.8% in comparison with the first quarter of 2008 (source: Thomson Reuters, Global Project Finance Review, Q1 2009) and thus investors need to regain confidence in the markets.