

## Corporate & Financial Weekly Digest

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### **Argentine Instrumentality Not the Government's Alter Ego**

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An instrumentality of the Republic of Argentina could not be deemed the government's alter ego based on its role in implementing Argentina's energy policies and thus was not liable for the country's bond debts.

Argentina defaulted on \$1.5 billion in bond payments but has few assets in the United States, which has forced creditors to look elsewhere for repayment. Creditor NML Capital, Ltd. sued Energia Argentina S.A. (ENARSA), an instrumentality of the Argentine government that plays a substantial role in enacting Argentina's energy policies but that has independent corporate status under Argentine law. NML argued that ENARSA is an alter ego of the government because the national government owns 96% of ENARSA shares, controls ENARSA regulations via government regulations, and provides ENARSA with substantial financial support through subsidies and other benefits.

The U.S. District Court for the Southern District of New York dismissed NML's claim, holding that Argentina's use of ENARSA to achieve its policy goals did not constitute the type of close management that constitutes an alter ego relationship and that Argentina's control of ENARSA was not deceitful. The court permitted NML to re-plead if it could show that the Argentine government directed ENARSA's daily operations. (*NML Capital, Ltd. v. The Republic of Argentina*, 2011 WL 524433 (S.D.N.Y. Feb. 15, 2011))

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