

INSURANCE LEGAL REGIME IN ARGENTINA: BANNING ON OFF – SHORE INSURANCE

According to the currently effective Section 1 of the Act N° 12,988, in Argentina there exists a general banning on entering into insurance agreements with foreign insurers as long as the assets and / or people covered by the insurance policy are located in the Argentine territory.

This means that all the people or things located in Argentina must be covered by an insurance policy issued by a domestic insurance company previously authorized to operate within the territory.

The explained situation may affect multinational companies which by different reasons (easier handling of the insurances, better prices, etc.) have decided to get their global insurance agreements with a single insurer with no branches or subsidiaries in Argentina.

The currently effective prohibition may also cause problems when facing huge risks exceeding the financial and economic capabilities of the domestic market.

The only way out is to try to set up what is known as a “fronting” structure: the global insurer (in this case would act out as a reinsurer) is able to get a domestic insurer just to issue the insurance policy on consideration of a fee. In this scheme:

- (i) The local insurer assigns to the foreign insurer or reinsurer all the insurance premiums paid by the policy holder;
- (ii) The local insurer does not retain any risk at all –or at best a small portion of the insured risk- since it reinsures all the risk with the foreign insurer or reinsurer;
- (iii) The foreign insurer or reinsurer keeps exclusively the supervision and handling of all the damages, losses or casualties related to the insurance agreement (the so called “Claims Control Clause”);
- (iv) in case a covered damage takes place, the local insurer is the one to pay the insured company but only if the foreign insurer or reinsurer has previously forwarded the necessary funds (this provision is ordinary called “Simultaneous

Payment Clause”);

(v) It is common practice to find “cut through clauses” in the insurance policies: according to these provisions, policy holders are entitled to pursue compensation right from the foreign insurer or reinsurer.

Due to certain legal dispositions arising out of the Insurance Act 17.418, the fronting scheme and /or “cut through clauses” and /or “simultaneous payment clause” might be held void by a local court of law.

Violations of Section 2 of the Act 12,988 are subject to a monetary sanction that may reach up to 25 times the insurance premium. Nowadays, hypothetic violations are very easily detected because all incoming transfer of funds are subject to tight foreign exchange controls to prevent money laundering and bank swallow capitals.

The proceeding to impose sanctions will be carried out by and before the federal tax authority (Federal Administration of Public Incomes or “AFIP”). This makes complete sense taking into account the high taxes levied on insurance premiums, which makes taking insurance coverage abroad a way of avoid local taxes.