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ATTENTION**

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EBD/84/16

January 19, 1984

To: Members of the Executive Board
From: The Secretary
Subject: Bolivia - Inquiry Under Article VIII, Section 2(b)

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by noon on Wednesday, January 25, 1984. In the absence of such a request, the draft decision will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Att: (1)

Other Distribution:
Department Heads



INTERNATIONAL MONETARY FUND

Bolivia: Inquiry Under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations Department
and the Western Hemisphere Department)

Approved by George P. Nicoletopoulos

January 19, 1984

A law firm has inquired, in connection with legal action before a court in the United States, whether the exchange measures introduced by Bolivia's Supreme Decree No. 19249 of November 3, 1982 were subject to approval by the Fund and, if so, whether they were approved by the Fund.

Attachment A contains a translation of the decree, and the letter of the law firm is reproduced in Attachment B.

The inquiry is made under Article VIII, Section 2(b) of the Fund's Articles of Agreement, the first sentence of which reads as follows:

"Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member."

Pursuant to this provision, the Executive Board adopted Decision No. 446-4, on June 10, 1949, in which it is stated that:

"The Fund will be pleased to lend its assistance in connection with any problem which may arise in relation to the foregoing interpretation or any other aspect of Article VIII, Section 2(b). In addition, the Fund is prepared to advise whether particular exchange control regulations are maintained or imposed consistently with the Fund Agreement." (Selected Decisions, Tenth Issue, pp. 233-234)

The staff's understanding of this decree is that it is part of a series of decrees and regulations that imposed a system of comprehensive exchange controls in Bolivia (see SM/82/137, 7/12/82, and SM/82/137, Supplement 1, 1/4/83, discussed by the Executive Board at EBM/83/9, 1/10/83). The Supreme Decree No. 19249 in its context gives rise to a restriction on payments and transfers for current international transactions subject to Article VIII, Section 2(a) and a multiple currency practice subject to Article VIII, Section 3. The restriction results from the unavailability of foreign exchange from the Central Bank of Bolivia in order to make payments and transfers for the transactions subject to the decree, and the multiple currency practice results from the exchange rate specified in the decree (\$b 145.40 per US\$1) that differs significantly from the unified exchange rate in effect for other transactions (buying rate of \$b 196 per US\$1 from November 5, 1982, replacing the official buying rate of \$b 43.18 per US\$1 and the free market rate, which averaged \$b 224 per US\$1 in October 1982). Bolivia's exchange restrictions and multiple currency practices were considered by the Executive Board at EBM/83/9, 1/10/83, and no approval was granted for any of these measures.

Accordingly, it is recommended that the Fund's response to the inquiry of the law firm be in accordance with Attachment C, and the following draft decision is proposed for adoption by the Executive Board:

The Director of the Legal Department is authorized to transmit the letter contained as Attachment C to EBD/84/16.

Attachments: (3)

CENTRAL BANK OF BOLIVIA
LA PAZ
BOLIVIA

Ref.: 74/11/82
Inspection Division

La Paz, November 12, 1982

SUBJECT: SUPREME DECREE NO. 19249 OF 11/3/82

For your information and use, we here reproduce in full the aforementioned Supreme Decree. Its text is as follows:

SUPREME DECREE NO. 19249. HERNAN SILES ZUAZO, PRESIDENT OF THE REPUBLIC.

WHEREAS:

The financial policy of the Constitutional Government for overcoming the severe crisis besetting the nation must respect the criterion of social justice, causing all Bolivians to share equally in the sacrifices required for the national economic recovery.

Financial policy must be designed to protect the wellbeing of the Bolivian people, with stress on the safeguarding and encouragement of the productive sectors and the interests of the major segments of the population.

The Constitutional Government must establish financial, monetary, banking, and credit policies consistent with these criteria of social justice and equity.

This policy must combine a solution to the financial crisis with a strong economic revival, stimulating the productive sectors and protecting the supreme interests of the Bolivian people.

As a result of the dollar's float, obligations to private banks in foreign currency, or in local currency with a value clause, incurred by individuals and legal persons have grown enormously, making it practically impossible for borrowers to meet their commitments.

This inability to pay applies particularly to strategic sectors of the economy, such as mining, energy, industry, trade, agriculture, cattle raising, and transportation, whose financial difficulties in turn affect the nation's economy in general and the legitimate economic rights of the Bolivian people in particular.

This situation is due mainly to the use of the dollar standard in bank lending and to the floating of the dollar.

To remedy this situation promptly, emergency policy measures must be taken, which is a function of the Supreme Government, because this is urgently required to meet public needs and to protect the legitimate rights of the people and the supreme interests of the nation.

IN THE COUNCIL OF MINISTERS,

DECREES:

Article 1. Effective today, all matured obligations stemming from bank or private operations, contracts, or credit services, incurred in foreign currency or in local currency with a dollar clause, between individuals and/or legal persons residing in Bolivia shall be deemed converted into Bolivian pesos at the current weighted exchange rate of \$b 145.40 per United States dollar, except in the case of contracts relating to the public housing system and the system of the Central Savings and Loan Fund for Housing, which shall be subject to special regulations.

Article 2. All matured obligations between resident individual and/or legal persons, stemming from acts, contracts, and operations in connection with loans by individuals, commercial entities, or banks shall be paid in local currency alone, at the exchange rate stipulated in the preceding article. To this end:

1. Foreign currency time deposits by resident individuals and/or legal persons, and matured obligations stemming from the lending of such deposited funds to such individuals or legal persons by banks of the Bolivian banking system, shall be deemed converted into Bolivian pesos at the current weighted exchange rate of \$b 145.40 per United States dollar and shall be repaid at that exchange rate.

2. Local currency obligations involving a dollar clause shall be payable only in the amount of local currency received, disregarding the dollar clause.

3. Outstanding matured obligations to banks stemming from foreign currency banking operations, contracts, and services, with funds provided by foreign financial institutions, shall be deemed converted into Bolivian pesos at the current weighted exchange rate and shall be payable by the debtors at that exchange rate, which is \$b 145.40 per United States dollar.

Banking system institutions shall renegotiate the terms and conditions of payment of obligations assumed by debtors in order that said obligations may be met.

Repayments on these loans in local currency shall be used to finance new imports in keeping with the priorities and in the manner established by the Supreme Government.

Obligations incurred by banks through operations and contracts with foreign financial institutions shall be maintained in the foreign currency initially agreed upon.

Article 3. Effective today, all operations, legal acts, and contracts in foreign currency or in local currency with a dollar clause between resident individuals and/or legal persons, except for operations, contracts, and services of the banking system with foreign parties, are prohibited.

Article 4. All obligations referred to in Articles 1 and 2 of this Decree which have not matured as of today shall be paid in local currency alone, at the sole exchange rate of the date of payment.

Article 5. Effective today, financial institutions shall be forbidden to accept deposits in foreign currency.

Article 6. In keeping with its legal functions, the Central Bank of Bolivia shall regulate and supervise the implementation of this Supreme Decree.

The Finance Minister is hereby charged with the execution and enforcement of this Supreme Decree.

Given in the Government Palace of the city of La Paz, on November 3, 1982.

Signed by:

DR. HERNAN SILES ZUAZO
Mario Velarde Dorado
Mario Roncal Antezana
Jose Ortiz Mercado
Arturo Nunez del Prado
Ernesto Aranibar Quiroga
Alfonso Camacha Pena
Hernando Poppe Martinez
Jorge Crespo Velasco
Roberto Arnez Villarroel

Mario Argandona Yanez
Carlos Barragan Vargas
Zenon Barrientos Mamani
Jorge O'Connor D'Arlach
Jaime Ponce Garcia
Horacio Torres Guzman
Hormando Vaca Diez
Oscar Villa Urioste
Jorge Gonzalez Roda

Very truly yours,

Central Bank of Bolivia

/s/

/s/

[illegible]

[illegible]

Law Offices
Tew, Spittler, Berger & Bluestein
304 Palermo Avenue
Coral Gables, Florida 33134

December 30, 1983

Mr. George P. Nicoletopoulos, Director
Legal Department
International Monetary Fund
Washington, D.C. 20431

Re: Edgar Schwarz v. John MacDonald -
Request for Certification Concerning
Status of Exchange Restrictions Under
Articles of Agreement of the Fund for
Use in Legal Proceeding - Case No. 83-32588/
Circuit Court of the 11th Judicial Circuit,
In and For Dade County, Florida

Dear Mr. Nicoletopoulos:

Pursuant to our telephone conversation of Wednesday, December 28, 1983, enclosed please find a copy of the Supreme Decree No. 19249- dated 3/11/82, together with a copy of complimentary information regarding same and a copy of the Complaint filed in the subject action.

As stated to you in our telephone conversation, the undersigned represents the Plaintiff in this case and the facts are as follows:

The Plaintiff made a number of loans to the Defendant in 1981, in United States Dollars in La Paz, Bolivia, and partial repayment of the loans were made at various times to the Plaintiff in U.S. Dollars and farm equipment. On July 30, 1982, both the Plaintiff and the Defendant were in Miami, Florida, and discussed the outstanding loans and both parties agreed to a final payout of \$80,000.00, U.S., to be paid to the Plaintiff by the Defendant upon demand. The Plaintiff resides in La Paz, Bolivia, and the Defendant resides in Miami, Florida.

As alleged in the Complaint, demand was made by the Plaintiff on the Defendant, but payment was refused; and as one of the defenses of the Defendant, he raises that only partial payment needs to be paid to satisfy the entire debt, said payment to be made in Bolivia currency, as per the Decree (a copy of which is enclosed).

It would be greatly appreciated if you could communicate to me, either by letter or telephone, whether or not the De-dollarization, pursuant to the Decree, needs to be approved and, if so, whether or not it was actually approved by the I.M.F. It is my understanding that both Bolivia and the United States are members of the I.M.F.

I thank you for your attention to this matter, and if you have any questions with regard to the above, or need additional information, please feel free to contact me at your convenience.

I hope you and your family had a beautiful holiday and best wishes for the New Year.

Very truly yours,

/ s /

John J. Spittler, Jr.

Encs.

Proposed Reply

Dear Mr. Spittler:

This letter is in reply to your letter of December 30, 1983 as to whether Bolivia's Supreme Decree No. 19249 of November 3, 1982 was subject to approval by the Fund and, if so, whether it was approved by the Fund.

I can state that the exchange restriction and the multiple currency practice relating to current payments and transfers introduced by the decree in question are subject to approval by the Fund, and that they have not been approved by the Fund. I can also confirm your understanding that both Bolivia and the United States are members of the Fund.

Very truly yours,

George P. Nicoletopoulos
Director
Legal Department

Mr. John J. Spittler, Jr.
Tew, Spittler, Berger & Bluestein
304 Palermo Avenue
Coral Gables, Florida 33134