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EBD/89/187

June 16, 1989

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 Friday, June 23, 1989. In the absence of such a request, the draft decision that appears on page 3 will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Mr. Elizalde (ext. 7796) is available to answer technical or factual questions relating to this paper.

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 François Gianviti

June 15, 1989

In connection with an action pending in a U.S. court, counsel for one of the parties has requested guidance from the Fund as to whether the exchange control provisions contained in the following Bolivian Supreme Decrees were imposed consistently with the Articles of Agreement of the International Monetary Fund:

- 1) Supreme Decree No. 19249 of November 3, 1982;
- 2) Supreme Decree No. 19250 of November 5, 1982;
- 3) Supreme Decree No. 19800 of September 23, 1983;
- 4) Supreme Decree No. 20028 of February 10, 1984;
- 5) Supreme Decree No. 20173 of April 12, 1984.

Attachments A and B1 to B5 contain the letter making the request and the English translation of the provisions referred to above.

The inquiry is made under Article VIII, Section 2(b) of the Fund's Articles of Agreement, which reads in part 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." 1/

Pursuant to this provision, Decision No. 446-4, adopted June 10, 1949, contains the following statement:

1/ For more detailed discussions of this provision, see "Legal Effects of Approval or Nonapproval of Exchange Restrictions by the Fund," EBS/88/13 (1/28/88) and "Statement by the General Counsel on Legal Effects of Approval or Nonapproval of Exchange Restrictions by the Fund," Executive Board Seminars 88/5 and 88/6 (6/3/88), Buff document 88/94 (5/16/88).

"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." 1/

For purposes of Article VIII, Section 2(b), the relevant question is whether the exchange control regulations subject of the inquiry are consistent with the Fund's Articles of Agreement at the time the contract in dispute is sought to be enforced. Accordingly, unless otherwise specified in the inquiry, the Fund's practice is to base its answer on the current text and implementation of the regulations. 2/

1. The Bolivian Supreme Decrees Nos. 19250 and 19800, and Nos. 19249 and 20173, were abrogated by Articles 12 and 40, respectively, of Supreme Decree No. 21060 of August 1985. As those four earlier Decrees are no longer in force, and even assuming they were exchange control regulations, it is irrelevant at this point to determine whether, when in force, they were consistent or inconsistent with the Fund's Articles of Agreement.

2. With respect to Supreme Decree No. 20028 of February 10, 1984, from information available to the staff, it would appear that its provisions are no longer effective because of subsequent regulations. Supreme Decree No. 20028 had authorized banks established in Bolivia to deposit with the Central Bank of Bolivia, between February 10 and February 24, 1984, Bolivian pesos received in payment of obligations arising from banking credit and services contracted in foreign currency between banks established in the country and individuals and/or legal entities domiciled in Bolivia, with funds coming from abroad. Upon verification by the Central Bank that the conditions laid down in the Decree were met, the Central Bank would recognize an obligation in foreign currency in favor of the depositing bank, and negotiate with them its form of payment.

In July 1987, by Supreme Decree No. 21660, the Central Bank of Bolivia was authorized to issue bonds in settlement of the obligations arising from the deposits made with the Central Bank in accordance with Supreme Decree No. 20028. The same Decree prescribed that the Bolivian private banks which decided to accept the bonds would continue to be responsible vis-à-vis their foreign creditors, and free to negotiate with them the repayment of those credits as they might consider appropriate to their interests.

1/ Selected Decisions, Thirteenth Issue, pp. 290-91.

2/ See EBS/88/13, pp. 51-53 and Buff document 88/94 (5/16/88).

If a Bolivian private bank with overdue payments to foreign creditors on December 31, 1987 that had made deposits in the Central Bank in accordance with Supreme Decree No. 20028 decided not to accept the bonds above mentioned, then the Bolivian Government would renegotiate that foreign debt, up to the amount of the deposit, on the same conditions applying to the Bolivian public debt, provided that the foreign creditor agreed to such renegotiation. The undertaking by the Bolivian Government to renegotiate those credits could not be considered as liberating the bank from its obligations vis-a-vis its foreign creditors, or as imposing restrictions on the making of payments and transfers by those banks in the settlement of the obligations arising from those contracts.

By Article 6 of Supreme Decree No. 21060 of 1985, which is still in force, and with the sole exception of a one hundred percent surrender requirement of foreign exchange earned from the export of goods and services, Bolivia established full freedom in transactions of foreign exchange. Article 6 of Decree No. 21060, in explaining the meaning of full freedom in foreign exchange transactions, states that ". . . the State Bank, the commercial banks, the exchange houses, and all natural and legal persons are authorized to engage in the buying and selling of foreign exchange under their own responsibility and for whatever purposes. Foreign exchange acquired in the official public sales of the Central Bank of Bolivia shall be of free disponibility or use by their purchasers."

3. It follows that none of the Supreme Decrees referred to in the inquiry are in effect. At present Bolivia only maintains exchange restrictions in two respects, namely, the restriction evidenced by payments arrears on external debt service from state enterprises to foreign commercial banks, and the restriction remaining pending the conclusion of bilateral rescheduling agreements with several official creditors. These restrictions have been approved by the Fund until July 31, 1989, and thus are maintained consistently with the Fund's Articles of Agreement. Bolivia also maintains exchange restrictions in the form of a limitation on the remittance of dividends and depreciation of direct investment made by nonresidents with bonds issued by the Central Bank of Bolivia in accordance with Supreme Decree No. 21660 of 1987. This restriction has not been approved by the Fund and, therefore, is inconsistent with the Fund's Articles of Agreement. However, none of these restrictions are relevant to the inquiry.

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

"The General Counsel is authorized to transmit
the letter contained in Attachment C to EBD/89/187."

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March 28, 1989

Francois Gianviti, Esq.
General Counsel
International Monetary Fund
Washington, D.C. 20431

RE: Bolivian Exchange Control Regulations

Dear Mr. Gianviti:

I am currently representing a Florida bank in connection with litigation against two Bolivian banks in the courts of Florida. During the course of this litigation, the defendants have attempted to make out a defense under Article 8, § 2b, of the Articles of the International Monetary Fund.

I, therefore, seek advice from the Fund as to whether the following Exchange Control Regulations of the Bolivian government were imposed consistent with the Regulations of the International Monetary Fund:

1. Supreme Decree No. 19249 of November 3, 1982.
2. Supreme Decree No. 19250 of November 5, 1982.
3. Supreme Decree No. 19800 of September 23, 1983.
4. Supreme Decree No. 20028 of February 10, 1984.
5. Supreme Decree No. 20173 of April 12, 1984.

The Spanish originals and translations of the relevant parts of those decrees are attached as an Appendix to this letter.

I would much appreciate guidance from the Fund as to whether these Exchange Control Provisions were imposed consistently with the Articles of Agreement of The International Monetary Fund.

Thank you for your kind cooperation.

Very truly yours,

/s/

BONNIE L. RODDENBERRY

SUPREME DECREE # 19249 OF NOV. 3, 1982

DR. HERNAN SILES ZUAZO

CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

CONSIDERING:

...That as a consequence of the application of the system of the floating of the dollar, obligations contracted in favor of private banks in foreign currency or in national currency with a value clause, on the part of individuals and/or legal entities domiciled in the country have increased immeasurably, making it practically impossible for borrowers to fulfill them.

...That this impossibility of payment principally affects strategic sectors of the economy such as mining, energy, industry, commerce, agriculture, livestock and transportation, whose financial difficulties in turn affect the complex of the national economy, and particularly, the legitimate economic rights of the Bolivian people.

...That this situation fundamentally is due to the dollarization of loans in the banking system and the application of the system of the floatation of the dollar.

...That to correct this situation immediately it is necessary to dictate political measures of emergency whose determination is an attribution of the Supreme Government....

DECREES:

First Article - As of this date, all matured obligations arising from operations, contracts and services of bank and private credit contracted in foreign currency or in national currency with a dollar clause with individuals and/or legal entities, domiciled in the country, are converted into Bolivian pesos at the weighted exchange rate of the day of 145.40 Bolivian pesos to the U.S. dollar, with the exception of contracts that refer to regime of social interest housing and the system of the Central Savings and Loan Bank for Housing, which shall be subject to specific regimes.

Second Article - All matured obligations acquired with individuals and/or legal entities domiciled in the country as a consequence of acts, contracts and operations of civil, commercial and banking credit shall be paid solely in national currency at the exchange rate set out in the preceding article.

For the effect:

- (1) Term deposits in foreign currency made by individuals and/or legal entities domiciled in the country, as well as matured obligations arising from loans made with such deposits to

these persons [or legal entities] by banks in the national financial system are converted into Bolivian pesos at the weighted exchange rate of this date of 145.40 pesos to the U.S. dollar and shall be repaid at this exchange rate.

- (2) The obligations in national currency made with a dollar clause shall be paid solely up to the amount of national currency received, leaving the dollar clause without effect.
- (3) Matured obligations in foreign currency assumed through banking operations, contracts and services in favor of banks, with resources stemming from financial institutions abroad, existing at this date, are converted to Bolivian pesos at the weighted exchange rate of the day and shall be paid by the debtors at this exchange rate, which is 145.40 pesos to the U.S. dollar.

The Institutions of the Banking System shall renegotiate the terms and conditions of payment of the obligations assumed by the debtors in order to make possible their effective fulfillment.

Recuperation of these loans in national currency shall be destined for the financing of new imports in conformity with the priorities and in the form established by the Supreme Government.

The obligations contracted by banks for operations and contracts agreed to with financial institutions abroad shall be maintained in the foreign currency with which they have been assumed.

Third Article - Starting on this date all operations, juridical acts, and contracts in foreign currency and in national currency with a dollar clause with individuals and/or legal entities domiciled in the country are prohibited with the exception of the operations, contracts and services of the banking system with the exterior.

Fourth Article - all obligations set out in Articles 1 and 2 of this decree whose term of maturity has not been reached as of this date shall be paid exclusively in national currency at the exchange rate in force at the moment of payment.

Fifth Article - As of this date financial institutions are prohibited from receiving deposits in foreign currency.

Sixth Article - The Central Bank of Bolivia, in conformity with its legal functions, shall make rules and regulations and control the application of the present decree.

Supreme Decree No. 19250 of Nov. 5, 1982

. . . Decrees: THE EXCHANGE CONTROL REGIME

First Article. - There is adopted in the country a unified exchange regime for all foreign currency transactions.

Second Article. - The Central Bank of Bolivia shall fix the exchange rate for the Bolivian peso with relation to the dollar of the United States and other foreign currencies, and regulate and administer the application of the exchange control regime, in conformity with its legal powers.

THE FOREIGN COMMERCE REGIME

Third Article. - There is installed in the country a regime of state control of foreign currency.

Fourth Article. - There is reestablished the regime of obligatory delivery to the state of 100% of the net value of all foreign currency stemming from all exportation of goods and services from the private and public sectors through the intermediation of the Central Bank of Bolivia.

Fifth Article. - The state, through the intermediation of the Central Bank of Bolivia and the organs created for this purpose shall assign foreign currency for imports, payment of obligations abroad, travel, student support and medical attention, in accordance with the general lines, rules and priorities determined by the Supreme Government.

Sixth Article. - As of this date, all operations in foreign currency must be effectuated through the Central Bank of Bolivia, which is the only institution legally empowered for this purpose.

Seventh Article. - As of this date, all exportation of goods and services must be effectuated through documentary letters of credit on the Central Bank of Bolivia and all importation must be supported by letters of credit on foreign banks. . . .

Eleventh Article. - Individuals and legal entities domiciled in the country and tourists shall sell foreign currency exclusively to the Central Bank of Bolivia, the State Bank, or other agents of intermediation legally constituted and authorized. . . .

Fifteenth Article. - Banks, Exchange Houses, Hotels and Tourism Agencies, legally constituted and authorized, are absolutely prohibited from selling foreign currency except to the Central Bank of Bolivia.

. . . .

Supreme Decree No. 19800 of Sept. 23, 1983
. . .

THE EXCHANGE REGIME

First Article. - The unified exchange regime for all transactions in foreign currency is maintained without exception.

Second Article. - The Ministry of Finance shall regulate and administer the application of the exchange control regime.

Third Article. - the regime of the state control of foreign currency and the obligatory delivery to the State by intermediation of the Central Bank of Bolivia of 100% of the net value of the foreign currency arising from the exportation of goods and services of the private and public sectors, as well as that stemming from external credits, is maintained in the country. . . .

Fifth Article. - The Ministry of Finance, through the National Commission for Exchange Policy, shall assign foreign currency for the importation for goods and services, the payment of foreign obligations, travel, student maintenance and medical attention, in conformity with the general lines, norms and priorities determined by the Supreme Government. . . .

Seventeenth Article. - Supreme Decree No. 19250 and other provisions contrary to this Decree are revoked. . . .

Supreme Decree 20028 of February 10, 1984

CONSIDERING:

That by Supreme Decree No. 19249 of November 3d, 1982, it was determined that all matured obligations stemming from operations, contracts and services of banking and private credit contracted in foreign currency or in national currency with a dollar clause between individuals and/or legal entities, domiciled in the country, are converted into Bolivian pesos; . .

That it is now necessary to establish rules for realizing and investigating the veracity of these matured obligations, for the purpose of making known the corresponding financial treatment. . . .

DECREES:

Article 1 - The Central Bank of Bolivia, starting from this date and until February 24, 1984, shall receive in deposit from the banks established in the country, Bolivian pesos for operations paid and matured arising from banking credit contracts and services contracted in foreign currency, with funds coming from abroad, between banks established in the country and individuals and/or legal entities domiciled in the national territory.

Article 2 - The deposits that the Central Bank of Bolivia shall receive in accordance with the First Article of the present Supreme Decree shall be effectuated at the exchange rate in effect on the day of deposit.

Article 3 - Once the deposit has been effectuated, the depositing Banks shall fulfill the following requirements designed to evidence the legitimacy of the operations that gave rise to these deposits:

- (a) Present to the Central Bank of Bolivia, Division of Fiscalization, a complete listing of its obligations with its foreign creditors.
- (b) Have registered these operations with the Central Bank of Bolivia.
- (c) Demonstrate clearly that the banks of the system can not count upon the availability of their own foreign currency.
- (d) For operations stemming from the importation of goods, they shall present:
 - (i) the importation policy, a copy of which should be furnished to the national Customs.
 - (ii) A certification of foreign auditors registered in accordance with the rules in force that proves that

the operations were registered on the books at the time that they were carried out.

- (e) For financing operations in cash they shall present a certificate of foreign auditors registered in accordance with the rules in force.
- (f) The Central Bank of Bolivia, through the Division of Fiscalization, is authorized to verify bank portfolios with branches and internal and external correspondents, for the purpose of proving any utilization, partial payment, or total payment of the financing in the country and/or abroad.

Article 4 - The banks that avail themselves of the present Supreme Decree are obligated to present certification from the creditor banker, approved by the monetary or fiscalizing authority in the country of origin. Such certification shall attest to the obligation on the date of the deposit and indicate if there is a guaranty of collateral abroad.

Article 5 - The requirements set out in the preceding articles must be fulfilled without postponement, by the 30th day of April 1984.

Article 6 - The Central Bank of Bolivia, once it has quantified the operations and verified compliance with the requirements established in this Supreme Decree, shall recognize an obligation with the depositing Banks and shall negotiate its form of payment.

Article 7 - The sums deposited that correspond to the debts not verified in accordance with the provisions of this Supreme Decree shall be returned in Bolivian pesos, without recognition of interest or any other concession.

Article 8 - The banks that effectuate deposits for the specific purpose of the present Supreme Decree, shall not show any legal reserves until the 24th day of February, 1984, under penalty of losing the right stemming from the effectuated deposit.

Article 9 - Those cases arising from d.S. 19249 not contemplated in this Supreme Decree shall be the object of later legal provisions.

Article 10 - All provisions contrary to this Supreme Decree are abrogated.

Exhibit H

SUPREME DECREE NO. 20173 OF APR. 12, 1984

HERNAN SILES ZUAZO
CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

CONSIDERING:

That it is necessary to create operative mechanisms required to move forward the policy of financial economic ordering undertaken by the Constitutional Government, as a means of overcoming the crisis confronting the nation and of promoting economic recuperation for the benefit of the Bolivian people.

That since application of Supreme Decree 19249 of November 3, 1982, the economic activities of the country have been realized under a system of liquidation of obligations in foreign currency and in national currency with a dollar clause, considering different types of exchange, which have benefited certain sectors to the detriment of others.

That it is necessary to normalize financial intermediation in the country in such form that it does not signify advantages as a product of the inflationary phenomenon nor additional burdens for the State.

That the restructuring of the foreign debt in general ought to be carried out without adversely affecting the position of the international reserves of the Central Bank of Bolivia.

IN COUNCIL OF MINISTERS,

DECREES:

Article 1 - The entire portfolio of the national Financial System financed with foreign resources, matured on this date and which have been charged and paid between February 25, 1984 and the date of the present decree, can be deposited in the Central Bank of Bolivia at the exchange rate in effect on the day of the deposit. Such funds should be deposited in the Central Bank by April 30, 1984, and if the requirements set out in Art. 3 of S.[upreme] D.[ecree] 20028 are complied with, by May 31st, 1984.

Article 2 - The government shall present to the Legislature drafts of laws that shall determine the instruments of payment to be delivered to the Banks for the deposit effectuated on the basis of Art. 1 of the present Decree, S.D. 20028 and S.D. 19249.

Article 3 - All of the external debt of the National financial System contracted by November 3, 1982, and not yet matured, and the matured debt and not blocked, shall be restructured in conditions no less favorable than the following:

Term:	10 years
Interest:	LIBOR - 2%
Grace period:	4 years
Payment of interest:	Semestral

Article 4 - The Central Bank of Bolivia, upon prior verification of the pertinent documentation, shall deliver Certificates of Guarantee for delivery of foreign currency for the service of this debt at the exchange rate in effect on the day of payment and which can not be effectuated prior to being due.

In order to make use of this guaranty, the financial system must present to the External Financial Management of the Central Bank of Bank of Bolivia the supporting documentation for the negotiations effectuated.

Article 5 - Debtors of a bank domiciled in the country, by virtue of credits obtained with resources from abroad and restructured by the bank with its foreign creditors, may request the financial system to avail themselves of the same conditions with the exception of the interest rate, which can not be in any case higher than 4% above LIBOR.

Article 6 - Debtors that should pay a bank domiciled in the country their debts in the periods originally stipulated shall do so in Bolivian pesos at the exchange rate in effect on the day of payment and with the other aspects or conditions originally stipulated.

Article 7 - The interest on past-due and unmatured debt shall be repaid at the original rate of interest stipulated.

Article 8 - The Commercial Bank may utilize these funds by placing them in the market, so that they maintain their value, in which case the rate of interest can not be greater than 4% above LIBOR, or in default thereof, in national currency at the interest rate prevailing in the market.

Article 9 - The private external debt contracted directly by the private sector abroad, whether or not guaranteed by the National Financial System, should be renegotiated and restructured in conditions no less favorable than the following:

Term:	10 years
Grace Period:	5 years
Payment of interest:	Semestral
Interest rate:	LIBOR plus 2%.

Article 10 - The Central Bank of Bolivia, after prior verification of the pertinent documentation, shall bestow Certificates of Guaranty for delivery of the foreign currency for the service of this debt at the exchange rate in effect on the day of payment and which can not be effectuated prior to being due.

Article 11 - All provisions contrary to the present Decree are
revoked. . . .

June __, 1989

Bonnie L. Rodenberry, Esq.
Coffey, Aragon, Martin and
Burlington, P.A.
Penthouse, 2699 South Bayshore Dr.
Miami, FL 33133

Dear Ms. Rodenberry:

This is in response to your letter of March 28, 1989 addressed to the Fund, concerning the consistency of Bolivian Supreme Decrees Nos. 19249, 19250, 19800, 20028 and 20173 with the Fund's Articles of Agreement.

The Fund's advice on the consistency of these regulations with the Fund's Articles of Agreement is based on the current text and implementation of the regulations. This is in accordance with Article VIII, Section 2(b) which prevents the enforcement of a contract that is contrary to exchange control regulations that are maintained or imposed consistently with the Fund Agreement at the time of said enforcement.

1. In this respect it must be noted that Bolivian Supreme Decrees Nos. 19250 and 19800, and Nos. 19249 and 20173, were abrogated by Articles 12 and 40, respectively, of Bolivian Supreme Decree No. 21060 of August 1985, which also established full freedom in transactions of foreign exchange: "There shall be freedom in foreign exchange operations Accordingly, the State Bank, the commercial banks, the exchange houses, and all natural and legal persons are authorized to engage in the buying and selling of foreign exchange under their own responsibility and for whatever purposes. Foreign exchange acquired in the official public sales of the Central

Bank of Bolivia shall be of free disponibility or use by their purchasers." (Article 6).

As Decrees Nos. 19250, 19800, 19249, and 20173 are no longer in force, it is irrelevant at this point to establish whether, when in force, they were exchange control regulations consistent or inconsistent with the Fund's Articles of Agreement.

2. With respect to Supreme Decree No. 20028 of February 10, 1984, it would appear from the information available to us that its provisions are no longer effective because of subsequent regulations. In July 1987, by Supreme Decree No. 21660, the Central Bank of Bolivia was authorized to issue bonds in settlement of the obligations of the Central Bank arising from the deposits made with it by Bolivian private banks in accordance with Supreme Decree No. 20028 of 1984. At the same time, Article 49 of Supreme Decree No. 21660 established that acceptance of the bonds by those banks would be considered as full payment and thus extinguish all the obligations of the Central Bank of Bolivia arising from those deposits, and that those banks would continue to be responsible vis-à-vis their foreign creditors, and free to negotiate the repayment of those credits as they might consider appropriate to their interests. If a Bolivian private bank did not accept the bonds, then the Bolivian Government undertook to renegotiate the foreign debt represented by the deposit up to its amount, provided that the foreign creditor agreed to such renegotiation. Supreme Decree No. 21660, however, could not be considered as liberating the bank from its obligations vis-à-vis its foreign creditors.

Thus, it is no longer relevant at this point to establish whether the provisions of Supreme Decree No. 20028 were initially consistent with the Fund's Articles of Agreement. Moreover, the subsequent regulations have not imposed restrictions relevant to your inquiry.

Sincerely yours,

François Gianviti
General Counsel

Attest: (seal)

Leo Van Houtven
Secretary

