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‹SPAN›EFFECTS RELATED TO MONEY CREDIT OPERATIONS‹/SPAN› OF LAW NO. 21,314 WHICH REGULATES MARKET AGENTS AND PENSION ADVISORS

On Tuesday, April 13th of 2021, the above referred law that establishes new requirements for transparency and strengthens the responsibilities of market agents, regulates the social security advice and other matters indicated therein, was published in the Official Gazette (hereinafter, the "New Law").

Article 9° of the New Law modified Law No. 18,010 in many matters, being the most relevant the ones below indicated:

Default interests

Article 9° of the New Law incorporates a new second subparagraph to article 16 of Law No. 18,010 (below highlighted), whose text is modified as follows:

"Article 16.- The borrower of a money credit operation that delays the fulfillment of its obligation, owes current (average banking) interests as of the date of said delay and at the rates in force during such delay, unless otherwise agreed upon by the parties thereof or if a higher interest has been legally established.

The default interest above mentioned cannot be charged over any amount jointly with, or in addition to, any other interest. In addition, default interest may only be charged on that part of the capital that is effectively overdue and may not be capitalized for the calculation of interest of any kind".

The incorporation of the aforementioned subparagraph to the bill of law occurred when this bill was being discussed in the corresponding Mixed Commission in Congress, and, once it was incorporated to the bill, was widely reported as a legal provision that was supposed to end with the compounding of regular interests not paid when due (legal compounding –anatocismo legal- established in the third subparagraph of article 9 of Law No. 18,010).

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In the context of a money credit operation, the nature of the default interest corresponds to a legal or conventional valuation, as appropriate (see first subparagraph of article 16 herein quoted) of the damages caused to the creditor of a credit operation of money for the default (which in this case is identified with the delay) of the debtor in the payment of principal or interest.

Considering that the law must be construed adopting an objective criterion (that is, seeking its proper meaning), we believe that it cannot be argued that through the aforementioned subparagraph there has been a tacit derogation of the third subparagraph of Article 9 of Law No. 18,010. Notwithstanding this, we note that the true meaning and scope of this provision must be established by the relevant authorities.

Other interpretative provisions regarding interests

In addition to the rule just mentioned, Article 9 of the New Law incorporates new subparagraphs to Articles 6 and 10 of Law 18,010, whose effect is to emphasize that interest only can be charged (that is, interest only accrues) on the outstanding principal, not on repaid principal.

Fees

Finally, Article 9 of the New Law incorporates into Law No. 18,010 a new Article 19 ter, which regulates the fees charged by the entities supervised by the Financial Market Commission ("CMF") and/or subject to its control by virtue of Article 31 of Law No. 18,010 (institutions that place funds through massive money credit operations), jointly the "Supervised Entities", in the money credit operations that they grant, which must correspond to compensation for services actually and effectively rendered.

On the other hand, article 19 ter establishes that the CMF must issue a general rule, within the 12 months following April 13, 2021, by which it will determine:

• the requirements, rules and conditions that the fees charged by the Supervised Entities under money credit operations must meet; and
• objective criteria for determining such fees, which must be calculated based on the cost of providing the service.

Compliance with this regulation will be of utmost importance for the

Supervised Entities, since any fees that do not comply with them will be considered as interest and, as known, under Law No. 18,010 interest is subject to the maximum conventional rate's value applicable according to the term and amount of the relevant obligation.