American University of Armenia

Masters' thesis:

Debt for Equity Swap for Resolving External Public Debt Problems

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Abstract

This paper presents the basic analytics of a debt for equity swap and illustrates the concept with a detailed example of Armenian and international best practices.

This paper covers the main problems concerning debt for equity swap. It discusses the public policy and social value of the transaction, identifies private actors involved in the transaction and their interests, presents Armenian legal framework of/for the transaction, introduces the researched case implemented by Armenia in 2003 identifying its steps, interviews with specialists and presents evidences from international best practice. The paper is concluded by procedure evaluation, identification of gaps/breakdowns and substantial recommendations for reforms.

Some gaps were also identified concerning the regulated event: such as the treaty and its structure, lack of laws/provisions was also pointed out in regard to the strategic objects- subjects to privatization and direct sales, identification of decision makers and the bases for making the list of assets to be swapped. The disadvantages of debt for equity swap program through direct sales applied by Armenia were also pointed out.

Introduction

This study is about the debt for equity swap for resolving external public debt (hereinafter "Debt") problems. The regulated event is an unusual one, relevantly new in the Republic of Armenia (hereinafter "RA" or "Armenia"), and thus not very well regulated. The Debt problem emerged in Armenia after the newly gained independence in 1992. During the last 10-12 years RA Government (hereinafter "Government") realized that the accumulation of huge external public Debt will become unsustainable therefore started to take necessary steps to reduce the burden. The

research[1] shows that from1995 to 1996 the Government tried to resolve the problem by restructuring[2] part of its Debt. Since all the efforts were in vain the Government decided to try out the other available option "Debt for Equity Swap".

Regulation of this activity is important because society values low level of external debt, opportunity of substantial foreign investments and following possibility to increase competition, in some cases employment increase, and increase in taxable income. And it is in the public interest to follow a policy of debt reduction, the implementation of such transaction in the best way for economic stability/development and local business development, etc.

Chapter One: Private actors – private interests

The regulated event is particularly significant for 1)the debtor state, its domestic company with significant state participation or the company 100% owned by the state (hereinafter "Domestic Company"), and 2)creditor state, and its domestic company interested in gaining shares of debtor state's company (hereinafter "Foreign Company").

The interests of both parties involved in the transaction may converge and diverge. Debtor state's main interests are the reduction of external public debt, utilization of savings for other social purposes/expenses, potential foreign investments, possible increase in management quality in domestic companies, introduction of new technologies, new markets for domestic products, business development and enlargement, increase in employment, etc. Creditor state's key interest is the repayment of Debt either in cash or in form of assets, and in this particular case in form of

[1] Interview with Head of the Public Debt Management Department of RA Ministry of Finance and Economy Mr. Arshaluys Margaryan dated on March 15, 2007 (Appendix D)

[2] Debt restructuring is any action by a creditor that officially alters the terms established for repayment in a manner that provides a reduction in near-term debt service obligations (debt relief). This includes buy-backs, debt and debt service reduction exchanges, forgiveness, rescheduling, rephrasing and refinancing.

equity with attractive and profitable conditions, extending business, new markets, production lines, products and technologies. Local Company may also provide resources for the Foreign Company, which is also very valuable feature. The interests of parties mostly diverge during negotiations regarding prices, terms and conditions of the contract. Sometimes the price problem may be resolved with intervention of independent external auditors, but disagreements regarding terms and conditions may be resolved trough negotiations only. For example, the debtor state may wish to limit the right of the Foreign Company to sell the assets of Domestic Company at all, or for some period of time; require substantial investments in the company, and/or to export the products of Domestic Company, etc.

As a result of active negotiations and mutual concessions the interests of the parties may be balanced.

Chapter Two: Armenian legal framework

The terms and conditions of the agreements (usually bilateral) as well as restrictions over certain assets and/or purchase price determination are not very well regulated by the Armenian domestic law, but the procedure for preparation works, drafting, negotiations, pre-signing, execution as well as the ratification of the agreement is regulated by RA Law on International Treaties, dated on July 28,2000 (hereinafter "Law on Treaties").

The basic provisions of the Law on Treaties regulating the procedure of the transaction are as follows:

1. The offer to enter into agreement may be made by RA President, RA Government, RA Prime Minister and/or by relevant departments.[3]

[3] See Appendix A: Armenian text of RA Laws and Regulations, RA Law on International Treaties, Art. 10.

2. If the initiative to enter into agreement is taken by any department of the Government, it prepares proper draft of the agreement and presents it to RA Ministry of Foreign Affairs ("MFA") with relevant argumentation about its necessity and/or importance, after which the MFA within 10 (ten) days submits the draft attached with all the relevant documents and MFA's opinion, to the government.[4]

3. The MFA within 10 days, after receiving the draft of the agreement from the relevant (authorized) department of the Government, provides the other Party with it for their review.[5]

4. After providing the other party with the draft the MFA appoints a delegation to negotiate the draft.[6]

5. RA Law on International Treaties, Art 16 describes who has the right to lead the negotiations and sign the agreement without authorization and who can empower a person to lead the negotiations and sign the agreement on behalf of the Republic of Armenia.

6. On the pre-signing stage the authorized representative together with all members of the delegation sign on every page of the final draft of agreement.[7]

7. The execution of the agreement is made by the authorized representative of the Government on behalf of RA.[8]

8. The executed agreement is subject to ratification by RA National Assembly (hereinafter "Parliament") and by RA president. The National Assembly ratifies intergovernmental treaties: a) concerning loans, obligations, receiving or providing guarantees, or treaties that create direct

[4] Ibid., Art. 11.

[5] Ibid., Art. 13.

[6] Ibid., Art. 15.

[7] Ibid., Art. 17.

[8] Ibid., Art. 18.

financial obligations for Armenia, b) including norms that are not in compliance with RA domestic laws[9]

9. In order to submit the agreement to the Parliament for the ratification, the MFA assures the receiving of following documents: a) apt department's reasoning for the ratification, b) the opinion of RA Ministry of Justice re inconsistencies between domestic laws and the agreement, c) the opinion of RA Ministry of Finance and Economy re defining additional direct financial liabilities or their absence for Armenia.[10]

10. Before the ratification of Treaty, the President submits it to RA Constitutional Court to examine its compliance with RA Constitution. If there is no inconsistency with RA Constitution the President submits Treaty to RA National Assembly for the Ratification[11]

As soon as the Treaty is ratified it becomes an inseparable/constituent part of RA Legislation. If a ratified international treaty stipulates norms other than those stipulated in domestic laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution can not be ratified[12].

Chapter Three: Case studies

Notwithstanding the regulated event is relevantly new in Armenian reality and it does not have much experience in this field. Recently Armenia has executed a bilateral Treaty seeking to resolve the external debt problem arisen between Armenia and Russian Federation ("Russia") during last decade.

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[9] Ibid., Art. 23.

[10] Ibid., Art. 25.

[11] Ibid., Art. 27.

[12] See Appendix A: Armenian text of RA Laws and Regulations, RA Constitution, Art. 6

Part I: **Pre-history**

The debt problem emerged in RA in 1992-1993. In 1995-1996 the government recognized that it could hardly service the debt due to the lack of budget revenues and their inadequate collection. The Government had a significant debt to United Nations in the amount of USD 56 million, to Turkmenistan in the amount of USD 35 million and to Russia, in the amount of USD 93.7 million. The problem became so huge that the government started to address the problem by alternative ways. It tried to resolve the problem by restructuring the debt. The debt to UN was repaid in full after twice restructuring the debt, while the debt to Turkmenistan was partially repaid after the restructuring the remaining portion was repaid through commodity swap. The problem with the debt to Russia remained unsolved.[13] (footnote-interview with ghghghg dated)

Part II: **Debt for Equity Swap: Armenia - Russia**

After restructuring of the debt in 1997, when it became clear that even as a result of the significant alleviation of the terms, it was still difficult to pay off the debt, therefore a necessity occurred to find more sophisticated non-standard methods for reducing the debt burden. There were not many alternative methods. The method used in case of Turkmenistan would not apply as Armenia didn't have appropriate products to attract them. One of the options still available to the Government afterwards was the debt for equity swap. The results were also mutually beneficial. The RA Government let the Russia know about their decision of way out version/solution. Russia agreed with the proposed plan and Armenia started preparing the draft of the Treaty. Both parties prepared their drafts and met to negotiate. The drafts were discussed and argued word by word. The negotiation process took almost 5 (five) years. Ultimately in 2002 as the result of round-the-

[13] See appendix X, Interview with The Chief Legal Council of RA Ministry of Finance and Economy Hayk Davtyan dated on March 16, 2007 (Appendix 3)

clock negotiations and mutual concessions the Treaty was executed, ratified and entered into force. It was implemented and the debt was reduced respectively in the amount of USD 93, 7 million.

Results of the interviews

Based on discussions with the authorized representatives of the Armenian Government involved in the negotiations and case analyzes, it may be concluded that the transaction was beneficial for Armenia.

According to the Head of the Public Debt Management Department of RA Ministry of Finance and Economy Mr. Arshaluys Margaryan, their interest was the reduction of debt burden. For example the interest of RA Ministry of Industry and Development was possible investments in Domestic companies, etc. The Chief Legal Council of RA Ministry of Finance and Economy Hayk Davtyan reported that the transaction was very beneficial for Armenia and that after-effects are still in future. He stated that foreign investments that are not made yet will be made for certain as it is not in the interest of Russian side as the relevant law[14] provides that the company will be liquidated in case of non-operation.

Chapter Four: The steps of the transaction

The main steps in debt for equity swap transaction, in accordance with RA Law on International Treaties are as follows:

[14] RA law on bankruptcy

Draft of the Treaty, after being discussed within government bodies (in our particular case Ministry of Finance and Economy, Ministry of Energy, Ministry of Industry and Development) is submitted to the Ministry of Foreign Affairs.[15]

1. The Ministry of Foreign Affairs submits the draft attached with all the relevant documents and ministry's opinion to the Government for final approval. Ministers discuss and approve the agreement.[16]
2. The Ministry of Foreign Affairs submits the draft to the other party (in this case, to the Government of Russian Federation).[17]
3. Although it is not required, the other party may prepare its own draft.
4. Both parties appoint delegations for the negotiations of the draft. (The process can take several years).[18]
5. Pre-signing. After negotiations all the members of delegation sign on each page of the final draft.[19]
6. The pre-signed draft is submitted to the governments of both parties.
7. The Government of each party authorizes one person to sign the Treaty on behalf of the Government after making an examination of the document.[20]
8. Execution[21]
9. The document is submitted to RA Ministry of Justice and RA Ministry of Finance and Economy.[22]

[15] See Appendix A: Armenian text of RA Laws and Regulations The Law of the RA on International Treaties, Art. 11(1)

[16] Ibid., Art 11(3)

[17] Ibid., Art 13

[18] Ibid., Art. 15

[19] Ibid., Art. 17

[20] Ibid., Art. 18

[21] Ibid., Art. 18

a. RA Ministry of Justice examines and identifies the inconsistencies of the Treaty with domestic laws and specifies the relevant provisions that are breached, if any.
b. RA Ministry of Finance and Economy examines whether the state will have to assume additional financial liabilities.

10. The Government submits all the package of the *documents* to the President's Administration[23] after which the President submits the Treaty to the Constitutional Court for the examination of its compliance with the Constitution. If there is no inconsistency it is submitted back to the President.[24]
11. The president submits the Treaty together with Constitutional Court's decision to the Parliament for the Ratification. The Treaty is reviewed and discussed by the Parliament and then it is brought to a vote.[25]
12. The Ministry of Foreign Affairs informs the other Party about the Ratification.
13. The Creditor State also informs about the course of their ratification and when completed, the Treaty comes into force.
14. Thereafter, within a month the Armenian party shall submit the list of the proposed companies with all the relevant documents including balance accounts and reports for the other party's selection.[26]
15. Within three months after forwarding the list of proposed companies to the other Party, the Parties ensure the audit of the market value of the companies, inventory of the

[22] Ibid., Art. 25

[23] Ibid., Art. 25(2)

[24] Ibid., Art. 27

[25] Ibid., Art. 27

[26] Treaty by and between Republic of Armenia and Russian Federation

proposed property by an independent auditing company. All the expenses are to be covered by the Armenian party.[27]

16. The Creditor State (in our case, the Russia) within a month after the independent audit selects the list of companies being of their interest. If one of the parties does not agree with the results of the audit of particular property/ company, it is excluded from the list and may be substituted by another property. [28]
17. Within a month after the intergovernmental protocols[29] come into force, the transmission acts are signed.[30]
18. Fiscal agents of the Parties, in our case RA Central Bank and RF Vneshekonom Bank execute all the settlements between the Parties arising from the Treaty. [31]
19. The Armenian and Russian parties reduce the debt respectively.

Chapter Five: International best practice

Part I: Universal data concerning the transaction

Debt for equity swap is most widely practiced in Latin America. This continent covers 80% of the worldwide volume of the transactions.[32]

Chile is one of the first countries that used this instrument, as far back as 1985 was the program of capitalization of debt obligations was worked out. Chilean government fixed cut rate of exchange for re-counting debt obligations into national currency, which exceeded market

[27] Ibid., Art. 3

[28] Ibid., Art. 4

[29] Assignation of the property objects (enterprises) implement Relevant protocols are compiled concerning the enterprises fulfilled/performed on the grounds of intergovernmental protocols which determine main characteristics assigned property objects, their prices (in US dollars), nominated owners and other conditions.

[30] Ibid., Art. 5

[31] Ibid., Art. 7

[32] Б. А. Хейфец, Решение Долговых Проблем, Москва, 2002 г., ñò. 229

quotation, to stimulate foreign investors. Debt for equity swap led to increase of value of Chilean debt from 64% nominal from the start of realization of the program to 75% in 1990. [33]

From the end of 80s the operation is more often practiced by the other countries of Latin America (Mexico, Brazil, Peru, Nicaragua), as well as by Nigeria, Philippines, Yugoslavia and Bulgaria. In Chile through realization of the debt for equity swap program in 1985-90 the swap operations were performed at the total amount of $US8 billion, which made up 40% of external debt of the country during middle of 80ths. Even in small Bulgaria for the account of debt obligations swap in 1994-97 $US120 million of external debt was paid off.[34]

The debt for equity swap and foreign direct investments in Latin America[35]

During the 1980s Latin America moved dramatically from a region of many growing, newly-industrialized countries to a region of depressed, unstable economies with a foreign debt that rose from about $US150 billion in 1979 to over $US400 billion in 1989. As borrowers, the Latin American governments went from fairly normal credit risks to almost uniform laggards, with most of the region's medium- and long-term bank debt in arrears or other impaired status by the end of the decade.

The crisis in lending conditions affected not only the borrowers in those countries, which went from fairly normal credit risks to almost uniform laggards, but also the foreign lenders. Major international commercial banks such as Citibank, Bank of America, and several others have had more than the value of their shareholders' equity loaned in total to borrowers in Latin America. When it became clearer that the crisis was due to structural inability to pay

[33] Ibid., ñò. 229
[34] Ibid., ñò. 230-231
[35] Journal of International Financial Management and Accounting, Robert Grosse, The Debt/Equity Swap in Latin America, 1992

(insolvency, in dollar terms), foreign commercial banks turned to an alternative strategy to try to protect their assets- debt for equity swap,

In fact the swaps were initiated in the mid-1980s as a method of breaking the impasse between Latin American governments and the foreign bank lenders, when most of the bank loans were not being serviced as contracted in most of those countries.

In practice the potential loan seller is contacted by an intermediary such as an investment banking firm that is seeking sources of funds for clients that want to invest in Latin American countries. The most active brokers in these swaps have been NMB Bank (of the Netherlands), Morgan Guaranty, Shearson Lehman Brothers, Bankers Trust, and Merrill Lynch. These intermediaries seek out both loan sellers and buyers, trying to put them together and profit from arranging the deals. Once a loan seller and buyer have been found, the intermediary must negotiate with the Latin American government involved, to obtain whatever permissions may be necessary to redeem the dollar loan for some value in local currency. A second possibility is for the lending bank to use the swap itself for direct investment in the borrowing country. This is what American Express Bank (AMEX Bank) did.

The AMEX Bank's case/experience [36]

In 1985 the AMEX Bank had loans outstanding to Mexican borrowers with a face value of about $US650 million. About 80% of these loans were to official Mexican government agencies such as the Central Bank and the Ministry of Economy. Since American Express Company has a clear, long-term commitment to operating in Mexico, the idea of buying into a Mexican company or financial institution was appealing. Accordingly, the bank began to

[36] Joel Bergsman and Wayne Edisis, Debt-Equity Swaps and Foreign Direct Investment in Latin America, The World Bank, Washington, D.C.,

investigate possible investments in the Mexican market. The bank considered the purchase of an existing Mexican banking company, or a new investment in a financial services firm, but these choices were eliminated because Mexican law forbade foreign purchases of financial institutions. After substantial internal discussions within American Express and talks with Mexican government officials, it was agreed that the first step into debt/equity ventures would be the purchase of pesos to invest in a series of new hotels to be constructed on various sites in Mexico. The sale of approximately $US100million (face value) in loans was agreed to be paid in pesos at the current market exchange rate with disbursement over time as the funds would be used in hotel construction and operation. At the time of this deal, when the Mexican government was just beginning its swap program, the discount offered to AMEX Bank was about 10%below the face value of the loans transited into pesos. Since American Express Bank sold its own loans, it did not enter into the dollar swap with another intermediary. That meant that the bank received $US90million worth of pesos. These pesos were disbursed subsequently to pay construction bills for the hotels, when invoices were presented by AMEX Bank to the Finance Ministry. The disbursements of funds were not made to AMEX Bank, but rather they went directly to the suppliers and contractors involved in the hotel projects, Since the payout was not immediate, the funds in the swap account earned interest, in this case at a rate in dollars that was slightly above the original loan interest rate. Since the original swap agreement was signed in 1986, the number of hotels permitted was expanded from five to seven. AMEX Bank entered into joint ventures in all seven of the hotels, with majority ownership in three of them. The partners were all large Mexican construction firms that the bank brought into the discussions early on, and which did the hotel construction in each location. Contracts with Sheraton (for three hotels), Radisson,

Hilton, Club Med, and Marriott were concluded in each of the hotel projects for that firm to operate and manage the facilities.

Non-Bank Foreign Direct Investors[37]

When the original lending bank itself undertakes the equity investment, the valuation is done as stated above. Another class of users of debt for equity swaps, however, are non-bank foreign direct investors that seek to obtain local funds through the swaps.

For example, Nissan and Chrysler both participated in large debt/equity swaps in Mexico during 1986 to finance the expansion of their auto assembly plants there. Nissan swapped about $US48 million (at a 1/3 discount), while Chrysler swapped over $US100 million (at a 44% discount), of the government's foreign debt. This debt was purchased by each auto company from bank lenders then the company presented the loan to the Mexican government for redemption in pesos rather than dollars. The Mexican government offered about 95% of the current dollar value of the loans to Nissan and about 80% to Chrysler, leaving Nissan with a cost of $US32 million to buy about $US46 million worth of Mexican pesos and Chrysler paying about $US56 million for about $US80 million of pesos. Hence, both Chrysler and Nissan benefited much more from using the swaps than from the alternative of simply buying pesos from the least expensive foreign exchange market.

In Mexico, the value of direct investment rose by 100% from 1985 to 1986 when the swap program went into effect, and swaps continued to finance more than half of direct investments.

Most countries in Latin America have decided that debt/equity swaps are sufficiently desirable that and formal program is justified. (SEE APPENDIX)

[37] Journal of International Financial Management and Accounting, Robert Grosse, The Debt/Equity Swap in Latin America, 1992

Chapter Six: **Procedure evaluation**

There are several very important issues that need to be addressed in this section.

1. Legal Regulation of the Transaction and the Treaty itself.

Although the policy is very good, the transaction however, besides the procedural aspects, is regulated by the Treaty itself.

In respect of debt for equity swap practice between Armenia and Russia the outcome shows that the transaction was not perfect as apposed to the opinion of the participants of the transaction and the members of negotiating delegations[38] It is quite obvious that there were some gaps which could be regulated by the Treaty. For example, there is no provision in the Treaty regarding foreign direct investments, which is one of the core advantages of the debt for equity swap transaction. Without foreign direct investments the companies given/transferred to the other country will not develop. Some very important obligations of the other party, such as the amount of money to be invested, terms of its implementation, the conditions for tax incentives (in order to attract investors) are absent. etc.

2. Determination of the assets to be swapped.

Another very important issue is the determination of the list of assets to be swapped. The following questions are still open: 1) on what bases the list of the assets to be swapped is prepared and approved? 2) is there any law restricting the State Property Management Department (the government)[39] or limiting it's power to include the strategic objects to the list.

3. Determination of the types of swap and limits.

[38] See appendix X, Interview with The Chief Legal Council of RA Ministry of Finance and Economy Hayk Davtyan dated on March 16, 2007 (Appendix C)

[39] RA law on Privatization of State property, Art. 4

The other issue is the authority and limits to chose or determine the types of swap. The international practice shows that the debt/equity swaps differ from country to country in light of broad economic strategies of those countries, and each swap typically involves significant negotiation and somewhat unique terms and depends on various political and economic conditions.

After the independence the debt burden became very heavy and in 2002 Armenia entered into debt for equity swap transactions. The transaction was implemented directly by exchanging the debt for the shares of state-owned companies.

The reasons why Armenia has chosen direct type of the transaction, according to the Head of the Public Debt Management Department of RA Ministry of Finance and Economy Mr. Arshaluys Margaryan was that the following:

1) The debt was accumulated and this method was more appropriate for the faster resolution of the problem, since there were delays to pay obligations/debt and the Ministry of Finance of The Russian Federation number of times requested and demanded payment of arrear

2) Political and geopolitical situations in the county[40], which is also somewhat "breakdown" taking into account that it would be more reasonable firstly to consider the situation from the economic perspective.

For example, Hrazdan TPP (Thermo power plant) is public property with strategic importance, which had its all assets and equipment depreciated. It was necessary to totally renovate the equipment what constituted a big problem concerning large amounts/expenditures and lack of

[40] For example, in case of tender the country with highest price and best conditions would get the objects, which could be for example Turkey. These objects have strategic importance for the Armenia and if we had announced open tender we should have to accept the results (see Appendix C, Interviews with the participants of the transaction).

sources. All the equipments and apparatus/machines were available from Russia. Although this was a good transaction from the perspective of escaping further problem with the growth of energy price, but somebody else could buy it for much higher price, bring new equipment and eventually Armenia might be able to repay the debt to Russia and even use the remaining amount for creating alternative sources of energy

The estimated price of the company was very high. It was transferred to Russia for comparably miserable price. The reason was that if Armenia had sold it for higher price, the price for energy would have to substantially grow up in Armenia, and in case with Russia the problem was resolved through verbal agreement based on old friendly relations: Russia paid for it low price and did not raise the price for energy.

Perhaps there were some alternative for the problem solving but in this case it was not possible to achieve this, because Armenia didn't open it's assets to the world via tender and negotiated with Russia only.

Chapter Seven: **Recommendations for reform**

Based on all sections of this paper above and taking into consideration the issues raised in the previous section the following reforms are recommended:

1. *The treaty.*

   The Treaties must include all the necessary provisions regarding conditions, obligations and responsibilities of both parties concerning the entire procedure, i.e. not only the technical aspects concerning the execution and only debtor states obligations concerning the transfer of property, but also the creditor states obligations and responsibilities in regard to gained property.

2. *Determination of the assets to be swapped.*

A separate law should be drafted and adopted to limit the power of discretion of State Property Management Department in determining the list of assets subject to privatization or swap.

3. *Right to direct sale, swap, or privatization of state assets.*

Direct sale, swap, or privatization of, at least strategic object/assets, must be prohibited and should be required to implement in more transparent way. In case of strategic objects/assets of the country:

1) public discussions must be arranged and the decision must be made by the referendum only; or

2) a state commission must be created to determine the assets that may be subject to sale, swap, or privatization. Such commission may have members from social and scientific organization, academicians, representatives of educational institutions, representatives of executive and legislative bodies, etc.

4. *Swap by Tender*.

A right to direct swap must be limited. As it has been discussed above, it is more beneficial to implement it trough an International tender. That might give a big opportunity to Armenia to find the best among many options proposed and be in line with the international best practice.

Chapter Eight: **Reform implementation**

All the reforms suggested in the chapter below may be implemented through interference of relevant legislative bodies trough active participation of public officials, private actors, mass media, NGOs, etc.

The idea of drafting and adopting a law that we recommend, can be suggested by any person – public officials and private actors, a local business owner, the State Property Management Department, NGO's, etc. Their contribution may be very effective up to proposed draft of the law. Afterwards, the draft is submitted to the Parliament and the decision maker is only the legislative body.

As regarding to the recommendation concerning the alternative ways of implementing an alienation of strategic object/assets, the decision makers are still legislative bodies, and their decision can be influenced by several stakeholders, interested groups or individuals. The idea of changing the conditions of alienation, prevention of its implementation by direct sales may be given by scientific research institutes in result of relevant analyses, by relevant articles concerning the issue publicized in the newspapers, by NGOs, trough media, etc.

And the final recommendation concerning the tender also needs to be implemented with direct interference of legislative bodies and the idea can be given by, for example, the ministry of Finance and Economy, as well as by media, public officials, deputies, etc.

Chapter Nine: **Conclusion**

To sum up, the debt for equity swap transaction was researched, the Armenian practice was studied and both advantages and disadvantages of the transaction were discussed.

We also introduced international best practice and found out that it differs from the practice of RA but conclud that the practice used in the countries of Latin America would not be appropriate for our country because of various political, geopolitical, economic and other conditions. It was recommended to try to change in future the way of implementing Debt for equity swap program. To substitute direct sales by the tender as it will be more economically beneficial. Another reform could be made by drafting and adopting law regulating and limiting discretion of State Property Management Department in determining the list of assets subject to privatization or swap.

And finally the paper highlights the drawbacks of the existing Treaty concerning the foreign direct investments and recommends better documentation and preparation of more detailed treaty.

APPENDIX A

Armenian text of RA laws and regulations

Ընդունված է 2000 թվականի հուլիսի 28-ին

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՕՐԵՆՔԸ

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ

ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳՐԵՐԻ ՄԱՍԻՆ

ՀՈԴՎԱԾ 10. ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐ ԿՆՔԵԼՈՒ ՆԱԽԱՁԵՌՆՈՒԹՅՈՒՆԸ

ՀՀ միջազգային պայմանագիր կնքելու նախաձեռնությամբ կարող են հանդես գալ ՀՀ Նախագահը, ՀՀ կառավարությունը, ՀՀ վարչապետը, գերատեսչությունները՝ իրենց գործունեության ոլորտին կամ իրավասությանը վերաբերող հարցերով,

ՀՀ միջազգային պայմանագիր կնքելու նախաձեռնությամբ կարող են հանդես գալ շահագրգիռ մեկից ավելի գերատեսչություններ:

ՀՈԴՎԱԾ 11. ՀՀ ՄԻՋՊԵՏԱԿԱՆ ԿԱՄ ՄԻՋԿԱՌԱՎԱՐԱԿԱՆ ՊԱՅՄԱՆԱԳԻՐ ԿՆՔԵԼՈՒ ԱՌԱՋԱՐԿՈՒԹՅՈՒՆԸ

1. Եթե ՀՀ միջպետական կամ միջկառավարական պայմանագիր կնքելու նախաձեռնությամբ հանդես է գալիս գերատեսչությունը, ապա նա մշակում է համապատասխան պայմանագրի նախագիծն ու դրա կնքման անհրաժեշտության կամ

նպատակահարմարության հիմնավորմամբ ներկայացնում է ՀՀ արտաքին գործերի նախարարություն:

3. Սույն հոդվածի 1-ին եւ 2-րդ կետերով սահմանված կարգով համապատասխան գերատեսչությունների առաջարկությունները կամ կարծիքներն ստանալուց հետո՝ 10-օրյա ժամկետում, ՀՀ արտաքին գործերի նախարարությունն ուսումնասիրում է դրանք եւ տվյալ միջպետական կամ միջկառավարական պայմանագիր կնքելու վերաբերյալ բոլոր փաստաթղթերը կամ դրանց պատճենները նախարարության կարծիքի հետ համապատասխանաբար ներկայացնում է ՀՀ Նախագահին կամ ՀՀ կառավարություն:

ՀՈԴՎԱԾ 13. *ՀՀ ՄԻՋՊԵՏԱԿԱՆ ԿԱՄ ՄԻՋԿԱՌԱՎԱՐԱԿԱՆ ՊԱՅՄԱՆԱԳՐԻ ՆԱԽԱԳԾԻՆ ԸՆԹԱՑՔ ՏԱԼԸ*

Շահագրգիռ գերատեսչությունների կարծիքները կամ դիտողությունները եւ առաջարկություններն ստանալուց հետո՝ տասնօրյա ժամկետում, իրավասու գերատեսչությունն ուսումնասիրում է դրանք, անհրաժեշտության դեպքում լրամշակում կամ վերամշակում է պայմանագրի նախագիծն ու ներկայացնում Հայաստանի Հանրապետության արտաքին գործերի նախարարություն:

ՀՈԴՎԱԾ 15. *ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳՐԻ ՇՈՒՐՋ ԲԱՆԱԿՑՈՒԹՅՈՒՆՆԵՐ ՎԱՐԵԼՈՒ, ՆԱԽԱՍՏՈՐԱԳՐԵԼՈՒ, ՍՏՈՐԱԳՐԵԼՈՒ, ՎԱՎԵՐԱՑՄԱՆ ԿԱՄ ՀԱՍՏԱՏՄԱՆ ՆԵՐԿԱՅԱՑՆԵԼՈՒ ԱՇԽԱՏԱՆՔՆԵՐԻ ԿԱԶՄԱԿԵՐՊՈՒՄԸ*

ՀՀ միջազգային պայմանագրի նախագիծը կամ այդպիսի պայմանագրի նախագծի վերաբերյալ հայկական կողմի կարծիքը կամ դիտողություններն ու առաջարկությունները պայմանագրի մյուս կողմին ներկայացնելուց հետո ՀՀ արտաքին գործերի նախարարությունը, ներգրավելով իրավասու գերատեսչություններին, կազմակերպում եւ ղեկավարում է այդ պայմանագրի կնքման շուրջ բանակցությունները, պայմանագրի տեքստը մյուս կողմի հետ համաձայնեցնելու, նախաստորագրելու, ստորագրելու եւ սահմանված կարգով վավերացման կամ հաստատման ներկայացնելու հետ կապված աշխատանքները:

ՀՈԴՎԱԾ 16. *ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐ ԿՆՔԵԼՈՒ ՇՈՒՐՋ ԲԱՆԱԿՑՈՒԹՅՈՒՆՆԵՐ ՎԱՐԵԼՈՒ, ԴԱ ՆԱԽԱՍՏՈՐԱԳՐԵԼՈՒ ԵՎ ՍՏՈՐԱԳՐԵԼՈՒ ԻՐԱՎԱՍՈՒԹՅՈՒՆ ՈՒՆԵՑՈՂ ԱՆՁԻՆՔ*

1. ՀՀ Նախագահը, ՀՀ վարչապետը եւ ՀՀ արտաքին գործերի նախարարը, առանց հատուկ լիազորությունների, իրավունք ունեն բանակցություններ վարել ՀՀ միջազգային պայմանագրի շուրջ եւ ստորագրել դա:

Գերատեսչության ղեկավարը, առանց հատուկ լիազորությունների, իրավունք ունի բանակցություններ վարել միջգերատեսչական պայմանագրի շուրջ եւ ստորագրել դա:

2. ՀՀ միջազգային պայմանագիր կնքելու շուրջ բանակցություններ վարելու եւ այդ պայմանագիրն ստորագրելու իրավունք ունեն նաեւ այն անձինք, ովքեր դրա համար ստացել են հատուկ լիազորություններ:

ՀՀ միջազգային պայմանագիր կնքելու շուրջ
բանակցություններ վարելու եւ դա ստորագրելու համար հատուկ լիազորություններ տալիս են՝

ա) ՀՀ Նախագահը՝ միջպետական պայմանագրի վերաբերյալ.

բ) ՀՀ վարչապետը՝ միջկառավարական պայմանագրի վերաբերյալ.

գ) գերատեսչության ղեկավարը՝ գերատեսչության անունից կնքվելիք միջգերատեսչական պայմանագրի վերաբերյալ:

ՀՈԴՎԱԾ 17. ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳՐԻ ՆԱԽԱՍՏՈՐԱԳՐՈՒՄԸ

1. ՀՀ միջազգային պայմանագրի նախաստորագրումը դրա կնքման փուլն է, որի ընթացքում ՀՀ օրենսդրությամբ սահմանված կարգով լիազորված անձն այդ պայմանագրի յուրաքանչյուր էջի վրա նշագրում կատարելու միջոցով հավաստում է գրավոր տեքստի վերաբերյալ հայկական կողմի նախնական համաձայնությունը, որից հետո պայմանագիրը սահմանված կարգով պատրաստ է ստորագրման՝ ՀՀ կողմից:

ՀՈԴՎԱԾ 18. ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳՐԻ ՍՏՈՐԱԳՐՈՒՄԸ

1. ՀՀ միջազգային պայմանագրի ստորագրումը դրա կնքման փուլն է, որով ավարտվում են պայմանագրի շուրջ բանակցությունները, եւ որի ընթացքում նախաստորագրված պայմանագիրը՝ ի հաստատումն դրա տեքստի հետ վերջնական համաձայնության, ՀՀ կողմից ստորագրում է սույն օրենքով այդպիսի իրավասություն կամ հատուկ լիազորություն ունեցող անձը, որից հետո պայմանագիրը համարվում է ՀՀ համար կնքված կամ ենթակա է վավերացման կամ հաստատման սույն օրենքով սահմանված կարգով:

ՀՈԴՎԱԾ 23. *ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐԸ ՎԱՎԵՐԱՅՆԵԼՈՒ, ՀԱՍՏԱՏԵԼՈՒ, ԱՅԴ ՊԱՅՄԱՆԱԳՐԻՆ ՄԻԱՆԱԼՈՒ ԿԱՐԳԸ*

1. ՀՀ միջազգային պայմանագիրը վավերացնում են

ՀՀ Ազգային ժողովը եւ ՀՀ Նախագահը:

2. ՀՀ Ազգային ժողովը վավերացնում է միջպետական պայմանագիրը: ՀՀ Ազգային ժողովը վավերացնում է նաեւ միջկառավարական եւ միջգերատեսչական այն պայմանագրերը, որոնք՝

ա) վերաբերում են վարկեր, փոխառություններ, երաշխիքներ ստանալուն կամ

դրանք տրամադրելուն կամ ՀՀ համար առաջացնում են այլ անմիջական ֆինանսական պարտավորություններ:

բ) պարունակում են ՀՀ օրենքներին հակասող նորմեր.

ՀՈԴՎԱԾ 25. *ՀՀ ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐԸ ՎԱՎԵՐԱՅՆԵԼՈՒ, ՀԱՍՏԱՏԵԼՈՒ ԿԱՄ ԴՐԱՆ ՄԻԱՆԱԼՈՒՆ ՆԵՐԿԱՅԱՑՆԵԼԸ*

1. ՀՀ միջազգային պայմանագիրը, սույն օրենքով

սահմանված կարգով, վավերացման, հաստատման կամ դրան միանալուն ներկայացնելու նպատակով ՀՀ արտաքին գործերի նախարարությունն ապահովում է հետեւյալ փաստաթղթերն ստանալը՝

ա) պայմանագիրը վավերացնելու, հաստատելու կամ դրան միանալու

նպատակահարմարության վերաբերյալ դրա կնքման համար պատասխանատու գերատեսչության հիմնավորումը.

բ) պայմանագրի դրույթների եւ ՀՀ օրենսդրության միջեւ հակասության կամ դրա բացակայության վերաբերյալ ՀՀ արդարադատության նախարարության կարծիքը.

գ) պայմանագրով ՀՀ համար անմիջական ֆինանսական պարտավորություններ սահմանող կամ դրա բացակայության վերաբերյալ ՀՀ ֆինանսների եւ էկոնոմիկայի նախարարության կարծիքը.

ՀՈԴՎԱԾ 27. *ՄԻՋԱԶԳԱՅԻՆ ՊԱՅՄԱՆԱԳԻՐԸ ՀՀ ԱԶԳԱՅԻՆ ԺՈՂՈՎԻ ՎԱՎԵՐԱՑՄԱՆԸ ՆԵՐԿԱՅԱՑՆԵԼԸ*

ՀՀ Ազգային ժողովի վավերացմանը ենթակա միջազգային պայմանագիրը ՀՀ Նախագահը նախապես ներկայացնում է ՀՀ սահմանադրական դատարան՝ պայմանագրում ամրագրված պարտավորությունները ՀՀ Սահմանադրությանը համապատասխանելու հարցի վերաբերյալ սահմանադրական դատարանի որոշումն ստանալու համար:

ՀՀ սահմանադրական դատարանի դրական որոշումն ստանալու դեպքում ՀՀ Նախագահը միջազգային պայմանագիրը ներկայացնում է ՀՀ Ազգային ժողովի վավերացմանը:

Ð²Ú²êî²ÜÆÐ²Üð²äºîàôÂÚ²Ü ê²ÐØ²Ü²¸ðàôÂÚàôÜ

Ընդունված է 27 նոյեմբերի 2005թ. հանրաքվեով

Ընդունված է 5 հուլիսի 1995թ. հանրաքվեով

Ðá¹í³Í6. ØÇç³½·³ÛÇÝ å³ÛÙ³Ý³·ñ»ñÝ áõÅÇ Ù»ç »Ý Ù ï ÝáõÙ ÙÇ³ÛÝ í³í»ñ³óí»Éáõó Ï³Ù Ñ³ë ï³ ï í»Éáõó Ñ» ï á: ØÇç³½·³ÛÇÝ å³ÛÙ³Ý³·ñ»ñÁ Ð³Û³ë ï³ÝÇ Ð³Ýñ³å» ï áõÃÛ³Ý Çñ³í³Ï³Ý Ñ³Ù³Ï³ñ·Ç µ³ÕÏ³óáõóÇã Ù³ëÝ »Ý: ºÃ» í³í»ñ³óí³Í ÙÇç³½·³ÛÇÝ å³ÛÙ³Ý³·ñáõÙ ë³ÑÙ³Ýíáõ Ù »Ý ³ÛÉ ÝáñÙ»ñ, ù³Ý Ý³Ë³ï»ëí³Í »Ý ûñ»ÝùÝ»ñáí, ³å³ ÏÇñ³éíáõÙ »Ý ³Û¹ ÝáñÙ»ñÁ:

APPENDIX B

The list of transferred companies to Russia

Ð ³ Ù ³ Ó ³ ÛÝ ³ ·ñÇ ßñç ³ Ý ³ ÏÝ»ñáõÙ èáõë ³ ë ï ³ ÝÇ ¹ ³ ßÝáõÃÛ ³ ÝÝ »Ý ÷áË ³ Ýóí»É ÐÐ ë»÷ ³ Ï ³ ÝáõÃÛáõÝ Ñ ³ Ý¹Çë ³ óáÕ Ñ» ï ¨Û ³ É ÁÝÏ»ñáõÃÛáõÝÝ»ñÁ

N	ÀÝÏ»ñáõÃÛ ³ Ý ³ Ýí ³ ÝáõÙÁ	öáË ³ Ýóí ³ Í ·áõÛùÇ ·Ý ³ Ñ ³ ï í ³ Í ³ ñÅ»ùÁ, ÙÉÝ ²ØÜ ¹áÉ ³ ñ	öáË ³ ÝóÙ ³ Ý ³ Ùë ³ ÃÇí Á
1	§Ø ³ ñë¦ ö ´ À	56.29	05.18.2003Ã.
2	§º ñ¨ ³ ÝÇ Ù ³ Ã»Ù ³ ï ÇÏ ³ Ï ³ Ý Ù»ù»Ý ³ Ý»ñÇ ·Ç ï ³ Ñ» ï ³ ½á ï ³ Ï ³ Ý ÇÝë ï Ç ï áõ ï ¦ ö ´ À	2.75	05.08.2003Ã.
3	§º ñ¨ ³ ÝÇ Ï ³ é ³ í ³ ñÙ ³ Ý ³ í ï áÙ ³ ï ³ óí ³ Í Ñ ³ Ù ³ Ï ³ ñ·»ñÇ ·Ç ï ³ Ñ» ï ³ ½á ï ³ Ï ³ Ý ÇÝë ï Ç ï áõ ï ¦ ö ´ À	3.37	05.18.2003Ã.
4	§º ñ¨ ³ ÝÇ ÝÛáõÃ ³ µ ³ ÝáõÃÛ ³ Ý ·Ç ï ³ Ñ» ï ³ ½á ï ³ Ï ³ Ý ÇÝë ï Ç ï áõ ï ¦ ö ´ À	0.35	05.18.2003Ã.
5	§Ðñ ³ ½¹ ³ ÝÇ æ¾Î ¦ ö ´ À	31.0	29.01.2004Ã.
	ÀÝ¹ ³ Ù»ÝÁ	**93.76**	

APPENDIX C

The results of researches in Latin America

Table *1. Cost and Benefits of Debt for Equity Swaps To Borrowing Countries*

Costs		*Benefits*	
1	replaces capital investment that would have occurred anyway	1	increases capital investment
2	creates inflationary pressure from redeeming the debt	2	reduces pressure to generate foreign exchange for debt servicing
3	results in more foreign control of the economy	3	improves the government's image as receptive to foreign business
4	creates unfair advantage for foreign vs. domestic investors (or for flight capital)	4	provides a mechanism for reducing the pressures of renegotiating the loans
5	more costly than just buying back debt in secondary market	5	encourages privatization of state owned firms

N.B.: If debtkquity swaps reduced foreign commercial bank debt by as little as 10% (i.e., by $US28 billion), this would result in an increase of the stock of direct investment in Latin America by about 50%.

Table *3. Characteristics of Debt/Equity Programs in Latin America**

Country	Date of latest program start	Value converted ($US bill.) by end 1988	Priority sector	Acceptable uses of funds #
Argentina	July 1987	$1.862	Yes	investment, payment of local debts
Brazil	Fab. 1988	$3.698	No	investment
Chile	May 1985	$5.900	No	investment, payment of local debts, others
Costa Rica	June 1986	$0.140	Yes	investment
Ecuador	Dec. 1986	$0.385	No	investment
Jamaica	n.d.	$0.004	-	investment
Mexico	Apr. 1986 Nov. 1987	$3.510	Yes	investment
Uruguay	n.d.	$0.128	-	investment
Venezuela	Apr. 1987	$0.094	Yes	investment, payment of local debts

* In all cases the official exchange rate is used to convert dollar values into local currency equivalents.

In each program, only foreign investors are permitted to convert foreign debt into local direct investment, except in Chile, where local investors also are allowed to carry out debt/equity swaps under some conditions.

Sources: Shearson Lehman Brothers, Intl.; Business International Corporation, *Business Latin America* (various dates); Lahera (1987); central banks.

APPENDIX D

Interviews with the participants of the transaction

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