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Argentine pension funds grab will further frighten investors, warn experts

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The Argentine government's plans to nationalise the country's private pension funds will weaken the already declining capital markets and could even create a new wave of disputes against the funds and the government, warn lawyers.

This week President Fernandez de Kirchner signed a bill that will see

Argentina's 10 private pension funds scrapped and transferred into the state's social security plan. The funds, which have been operating for 14 years, currently manage US\$30 billion in private savings and generate US\$5 billion in new contributions each year.

Alfonso Peña Robirosa of of Rattagan, Macchiavello Arocena & Peña Robirosa Abogados says, "This regulatory change, if pushed forward, will have a dramatic adverse effect on Argentina's already deteriorating capital market, and will likely be perceived by foreign investors as a new attack on legal predictability."

Kirchner likens the intervention to recent steps taken by major G8 states to safeguard their banks, saying the proposed bill will "protect retirees and workers" from a global market in turmoil.

But critics argue that Argentina's economy is buckling and the government needs a quick fix to meet demands of US\$13 billion in peso-denominated debts next year.

An Argentine capital markets attorney explains that the market has responded poorly to the bill because private funds are the major institutional investor in the Argentine economy. "Without the funds, the financing of many companies and projects, including a significant part of consumer financing, will be severely affected," he notes.

He says the creation of private pension funds in 1994 was due to perceptions that the government was not protecting retirees' savings. "The government frequently used those funds for other purposes and retirees' pensions were uncertain, and affected by inflation and fiscal deficits."

Peña Robirosa adds that there are clear similarities between the

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current proposal and Argentina's actions during the 2001/02 economic crisis. "If the bill is passed, as drafted, funds contributed into personal accounts will be seized without compensation and it is expected that this will trigger a number of claims against the executives and directors of the pension funds, as well as the government."

He compares this to the 2002 decree that forced all financial institutions to transfer their foreign currency stock to the central bank. "At the same time, and paradoxically, executives of banks operating in Argentina were charged for alleged misappropriation of funds and asset stripping," he explains.

Another prominent Argentine attorney says, "protection under either [public or private] system is not 100 per cent certain but at least beneficiaries in the private system have periodic reports on their funds, and the ability to move between funds to seek the best return."

Last year the country's previous government - led by Kirchner's husband - granted all affiliates to private funds the option to remain there or to move to the state system. Given that about 90 per cent of beneficiaries remained in the private system, sources are critical that the new proposal directly overrides this choice.

Others are concerned that the bill lacks details about how funds will be managed and used - although this lack of detail could be the bill's downfall. Some lawyers say Congress is unlikely to pass it in its current form, despite support from Argentina's unions as well as the governing Peronist Party, which has a majority in Congress.

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