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M. & M. BOMCHIL ABOGADOS

SEPTEMBER 2010

DOING BUSINESS IN ARGENTINA*

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I. THE COUNTRY AT A GLANCE

A. Map

B. Geography

The Republic of Argentina is located in the Southern and Western Hemispheres. Its relative position in South America gives the country a diversity of land and culture. From the Antarctic regions in the south to the forested jungle regions in the north, from the ocean coastline on the Atlantic to the rugged mountain regions in the west, and bordering five other countries, Argentina provides an important cultural and economic connection for all of South America.[2] It is the second largest country in South America and eighth in the world by land area and the largest among Spanish-speaking nations. Argentina's continental area is 2,766,890 square kilometers (1,068,300 sq mi), covering the area between the Andes mountain range in the west and the southern Atlantic Ocean in the east and south. Argentina borders Paraguay and Bolivia to the north, Brazil and Uruguay to the northeast, and Chile to the west and south. Because of the ample variations in longitude and elevation that exist in Argentina, the country is subject to a variety of climates. Generally, the climate is predominantly temperate with extremes ranging from subtropical in the north to sub polar in the far south. [3]

C. Population and Economy

The first inhabitants of the present Argentine territory were indigenous people who congregated in tribes and developed their respective cultures at different extents. In the XV Century the Spanish conquerors brought their own customs and values, thus generating a cultural convergence of everlasting dimensions, not without pain in some cases and cooperation in others. Spain established a permanent colony on the site of Buenos Aires in 1580, and the Viceroyalty of the Río de la Plata was created in 1776. This area was largely a country of Spanish immigrants and their descendants, known as *criollos*, and others of native cultures. A wave of foreign investment and immigration from Europe after 1870 led to the development of modern agriculture and to a near-reinvention of Argentine society and economy, leading to the strengthening of a cohesive state.

The last census carried out in 2001 reported 37,282,970 inhabitants. This number is currently expected to exceed 40M.

Argentina benefits from rich natural resources (including land suitable for livestock and crops, fisheries, oil, natural gas, gold, silver, potassium, manganese and many other minerals), a highly literate population, an export-

2 http://www.argentina.gov.ar/argentina/portal/paginas.dhtml?pagina=1483

3 http://www.asiatravel.com/south_america/southamericainfo.html

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oriented agricultural sector and a diversified industrial base. Argentina is one of the world's major agricultural producers, ranking third worldwide in production of honey, soybeans and sunflower seeds and is ranked fifth in the production of maize and eleventh in wheat. In 2007, agricultural output accounted for 9.4% of GDP and nearly one third of all exports. Soy and its byproducts, mainly animal feed and vegetable oils, are major export commodities at 24% of the total. Wheat, maize, sorghum and other cereals total 8%, while. beef, leather and dairy amount to 5% of total exports.[4]

D. Languages

Spanish is the official language in the Argentine Republic. The vast majority of the population is Roman Catholic**.**

E. Infrastructure

1. Roads

Since Argentina is almost 4,000 kilometers long and more than 1,000 km wide, long distance transportation is of great importance. Several toll expressways spread out from Buenos Aires, serving nearly half the nation's population. The majority of Argentine roads, however, are two-lane national and provincial routes. In 2003 there was 231,374 km of roads, of which only 30% were paved. Four branches of the Pan-American Highway run from Buenos Aires to the borders of Chile, Bolivia, Paraguay and Brazil. [5]

2. Railways

Argentina has a vast railway net that represents one of the main communications channels between the City of Buenos Aires and its outskirts, favoring also the integration between the capital city and the interior of the country. Tourist lines offer visitors a different way to travel around our territory.[6]

Argentina's railway system is divided in different lines: General Belgrano, General Roca, General Bartolomé Mitre, General San Martín, Domingo Faustino Sarmiento, General Urquiza and Línea Metropolitana, which control the railways of Buenos Aires and its suburbs. There are direct rail links with the Bolivian Railways network to Santa Cruz de la Sierra and La Paz; with Chile, through the Las Cuevas–Caracoles tunnel (across the Andes) and between Salta and Antofagasta; with Brazil, across the Paso de los Libres and Uruguayana bridge; with Paraguay (between Posadas and Encarnación by ferry-boat); and with Uruguay (between Concordia and Salto).There are also trains to Santa Fe, Santiago del Estero, Tucumán, Córdoba, Entre Ríos, Corrientes, Misiones, Neuquén and Rio Negro.

3. Ports and Waterways

Fluvial transport is not often used for people, with the exception of those who cross the Río de la Plata from Buenos Aires to some Uruguayan cities. Other services are exclusively used as river crossing, such as those in Tigre. River traffic is mostly made up of cargo, especially on the Paraná River, which is navigable by very large ships (the Panamax kind) downstream from the Greater Rosario area. This area produces and/or ships most of the

[4] http://en.wikipedia.org/wiki/Argentina

[5] http://en.wikipedia.org/wiki/Transportation_in_Argentina

[6] http://www.argentina.gov.ar/argentina/portal/paginas.dhtml?pagina=2137

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agricultural exports of Argentina.[7]

4. Airports

Argentinean airports connect Argentina with all major international destinations. There are 54 airports in Argentina; 90% of which are administrated by a private operator. Airports have services to important metropolitan areas, regional centers, frontier towns and tourist destinations. Sixteen of the airports are considered international. The most important airports are Ezeiza, which is located around 20 miles southwest of the city of Buenos Aires, and Jorge Newbery, which is located within the city of Buenos Aires serving domestic locations throughout the country and international flights limited to Uruguay.

5. Public Transportation

A majority of people employ public transport rather than personal cars to move around in the cities, especially in common business hours, since parking can be both difficult and expensive. Within urban areas, the main transportation system is usually the bus or *colectivo* (public transportation bus); bus lines transport millions of people every day in the larger cities and their metropolitan areas. Buenos Aires also has a subway system, the only one in the country, and Greater Buenos Aires is serviced by a system of suburban trains. In addition, long distance buses are fast, affordable and comfortable; they have become the primary means of long-distance transportation. [8]

[7] http://en.wikipedia.org/wiki/Transportation_in_Argentina

[8] http://en.wikipedia.org/wiki/Transportation_in_Argentina

II. GENERAL CONSIDERATIONS

A. Political System

Argentina is a Presidential Republic. The political system is formed by the three traditional branches: the Judicial, the Legislative and the Executive.

The Legislative Branch is the Congress, formed by the House of Representatives and the Senate. The primary function of the Congress is to pass, amend, revoke and repeal laws. The Executive Branch is made up of the President, the Vice – President, Ministers, and other officers and directors of administrative agencies. The president is the head of the State.

The President serves a four year term and may be re-elected only once. Election is by universal suffrage (over 18 years). There is a bicameral congress: the House of Representatives and a Senate. Deputies are elected for a four year term, half being elected every two years. Currently, each province elects two senators for the majority party and one for the minority party, all of them serving for a six-year term. As from 2001 senators are elected by direct vote. The President appoints a cabinet and a chief of cabinet who can be removed by a majority vote from each of the two houses.

The country is divided into a Federal Capital (the city of Buenos Aires) and 23 provinces. Each province has its own Governor, legislature and judiciary.

The major political parties are the Partido Justicialista (also known as "Peronist"), the Unión Cívica Radical and the Coalición Cívica (CC), although there are several more registered parties nationwide.

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The judicial branch is mentioned in Item B below.

B. Judicial System

The National Supreme Court of Justice (the 'Supreme Court') is at the highest level of the Argentinean judicial system. It exercises ordinary -general- appellate jurisdiction, special appellate jurisdiction and exclusive and original jurisdiction.

General appellate jurisdiction is exercised when matters have been previously treated by First and Second Instance courts. Said matters are those governed by the National Constitution and federal laws, such as issues related to international treaties, admiralty and maritime jurisdiction.

Special appellate jurisdiction is exercised through what is commonly referred to as 'constitutional control', since the Supreme Court has been endowed with the power to control legal rules and administrative acts.

The Supreme Court's exclusive and original jurisdiction involves all matters related to ambassadors, ministers and foreign consuls and those involving a province.

With the exception of exclusive and original jurisdiction cases, Supreme Court rulings are issued on appeal and after a specific petition has been filed (the latter being applicable to all matters brought before Judicial Courts). Likewise, the Supreme Court is only allowed to pass judgment on concrete litigation. Should this litigation be a collective action, the effects of the *res iudicata* shall affect all the persons in the same situation even when they were not a party to said litigation.

Jurisdiction over matters in the city of Buenos Aires can be federal or "national". Federal jurisdiction deals with cases based on federal matters referred to by the National Congress, like trademarks, maritime law or patent matters. On the other hand, national jurisdiction examines cases related to non-federal matters, like torts, contractual relationships, bankruptcy, commercial papers or company law.

There is also a general jurisdiction which has been vested in provincial courts and involves matters ruled by laws dictated by both national and local Congresses.

Moreover, alongside the aforementioned tribunals in the provinces presiding over ordinary matters, there are also tribunals having jurisdiction over controversies involving federal matters (i.e. federal jurisdiction).

Regarding subject-matter jurisdiction, most courts preside over specific issues (i.e. civil, commercial, criminal, labor, etc.).

The procedure applicable before most of the aforementioned courts is written and may involve any of the following stages: complaint, answer, defenses to the complaint, counterclaim, evidence stage and final ruling; whereas criminal proceedings are generally comprised of two stages, a probable cause-type proceeding followed by an oral trial before a three-judge court.

To take part in a judicial controversy it is necessary to act with a registered attorney, since only the latter is allowed to file writs before the courts.

C. Choice of Law - Jurisdiction

According to Argentinean law, parties executing an agreement are entitled to choose the law applicable to said relationship, but in order to choose a

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foreign law the agreement must have an international connection.

If no such provisions are made, the Argentinean Civil Code establishes that contracts are ruled by the laws in force at the place where the contract was signed. This statement is only applicable to agreements which do not define a specific location for their execution. In this case, the connecting factor is the place where the contract was signed, as mentioned above. The parties' right to select the law applicable to a contract is only limited by international public order provisions.

Argentinean law specifically rejects the application of foreign laws when they are contrary to public or criminal law, the State-supported religion (Roman Catholic), freedom of worship, morality, and when its application is contrary to the principles of Argentinean law, related to rules that establish arbitrary privileges, or in case local laws which may contradict foreign laws be more favorable as to the validity of the act in question.

As for the choice of jurisdiction, Argentinean law foresees two situations: (i) if the contract is to be executed in Argentina, even when the debtor is not domiciled therein, the contract can be adjudicated before an Argentinean judge; and (ii) if the contract is to be executed in another country and the debtor is domiciled in Argentina, the creditor can sue the debtor either in Argentina or in the place where the contract was executed, even if the debtor is not located there.

Jurisdiction granted to national courts cannot be extended. However, the courts' territorial jurisdiction can be extended by agreement of the parties only in cases involving patrimonial issues. In addition, if the issue in dispute is international, jurisdiction can also be extended in favor of foreign judges or arbitrators acting outside Argentina.

D. Alternative Dispute Resolution

The Argentinean legal system contemplates non-judicial dispute resolution procedures.

Within the city of Buenos Aires, Mediation Law No. 24,573 implements a mandatory mediation proceeding to take place before publicly or privately appointed mediators, who are not empowered to hand down a decision but to bring the parties together in order to reach an amicable settlement. As of today, no provincial jurisdiction has established this mechanism as mandatory. In case no agreement is reached, the plaintiff is entitled to bring the case before the Courts. If, on the other hand, an agreement is reached, its execution is compulsory for the parties, who may judicially enforce it in case of breach.

The aforementioned mediation procedure comprises a compulsory stage prior to the filing of any suit before the courts of the city of Buenos Aires, with the sole exception of those types of cases which are expressly excluded by Law No. 24,573 (for instance, provisional remedy cases).

Mediation proceedings aside, there are also several permanent arbitration tribunals, applying their own procedural rules, with the capacity of issuing awards and to which mainly disputes arising out of commercial agreements of some significance can be submitted if chosen by the parties. According to the Civil Procedural Code, only those matters which are eligible for settlement between the parties can be submitted to arbitration proceedings.

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Arbitration tribunals are not empowered to enforce their interim or definitive awards, which must be executed through the assistance of a judicial court.

The main advantage of these permanent arbitration tribunals is their proficiency in the resolution of certain disputes, the flexibility of their procedures and the fact that awards are handed down in a shorter timeframe than that applicable to ordinary judicial courts. Additionally, applicable expenses and taxes tend to be lower than those -charged by judicial courts.

The main private institutions providing arbitration services are the *Tribunal Arbitral de la Bolsa de Comercio de Buenos Aires*, the *Tribunal Arbitral Permanente de la Cámara Argentina de Comercio*, the *Tribunal General de Arbitraje y Mediación del Colegio de Escribanos de la Ciudad de Buenos Aires* and the *Centro Empresarial de Mediación y Arbitraje Asociación Civil*, the latter not a permanent arbitration tribunal but an entity formed by the major law and auditing firms, which provide mediation and arbitration services and act as arbitrators only if the parties provide for it.

Likewise, the law accepts the formation of ad hoc arbitration courts, which may be appointed before or after a lawsuit is filed before judicial courts. The applicable proceedings and the matters to be settled by such an arbitration court shall be decided by the parties through means of an arbitration agreement.

Parties are entitled to waive their right to appeal the arbitration tribunal's award to the judicial courts, except on appeal for the annulment of the award based on essential defects in the proceedings, or with regard to a hearing the tribunal awarded on issues not submitted by the parties to arbitration, or on an award issued in excess of the period of time agreed by the parties.

E. Enforcement of Foreign Judgments

Argentinean procedural law allows for the enforcement of judgments issued by foreign courts, including arbitration tribunals. Should there exist a treaty between Argentina and the country in which the judgment was issued, the execution proceeding will be that which is laid down in such treaty.

If there is no such treaty, for the foreign ruling to be enforced by Argentinean courts, the following requirements must be met: The judgment must have been issued by a competent court according to Argentinean conflict of laws rules regarding jurisdiction, and must have been final in the jurisdiction where it was rendered, resulting from a personal action; if the judgment involved personal property, the good or chattel in dispute must have been transferred to Argentina during or after the prosecution of the foreign action.

Furthermore, the complaint must have been duly served to the defendant against whom the judgment is being enforced and, in accordance with due process of law, the defendant must have been given an opportunity for defense. The judgment should be valid in the jurisdiction where it was passed and its authenticity ratified in accordance with the requirements of Argentinean laws. The judgment should not violate any principle of public order of Argentinean laws and must not enter into conflict with a prior or simultaneous judgment of an Argentinean court.

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Argentina has entered into various international treaties concerning the recognition and execution of foreign judgments. Among those are: (i) the Hague Convention of October 5, 1961, which abolished the Requirement of Legalization for Foreign Public Documents, was ratified by Argentina in 1987, whereby authentication was substituted by the "Apostille" procedure foreseen in that Treaty. This international agreement has significantly simplified the formalities set forth by the previous system; (ii) the 1889 and 1940 Montevideo Treaties; and (iii) the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (ratified in 1988).

In 1983 Argentina signed the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention). This Convention recognizes foreign judgments provided certain formalities are met: legalization and translation, and other procedural requirements such as the judge or tribunal rendering the judgment holds international jurisdiction to hear the case and pass judgment on it, the parties (who must have been appropriately summoned) were granted the opportunity to present their defense, within the limits imposed by the principles and acts of public policy of the State in which recognition or execution is sought.

F. Financial Considerations

1. Banking System

Banking activities in Argentina are mainly regulated by the Financial Entities Act (Law No. 21,526, as amended, the "FEA"), and by several resolutions issued by the Argentinean Central Bank (*Banco Central de la República Argentina*, the "Central Bank"). The FEA provides that the Central Bank is responsible for the regulation, control and supervision of financial entities, for the various types of financial entities that may operate in Argentina, and the relevant scope of permitted activities. The Central Bank has discretionary authority to authorize the establishment of new financial entities, their merger or consolidation, and to authorize the transfer of, or changes to, their banking businesses.

Neither the FEA nor any regulation issued by the Central Bank prevents foreign investors from participating in financial entities in Argentina. Any negotiation of shares or participation interests in a financial entity must be notified to the Central Bank, which may reject or approve on a discretionary basis. In addition, any transfer of interests in a financial entity that may produce changes in the entity's banking risk (CAMEL system) or in its shareholding structure must be pre-approved by the Central Bank. The Central Bank also supervises the appointment of the entities' officers, the opening of branches and other agencies in Argentina and abroad, and the participation of local financial entities in foreign financial or banking institutions.

The establishment of representative offices of foreign banking institutions in Argentina is subject to the Central Bank's approval. Representative offices may neither act as financial intermediaries nor effect exchange transactions. Representative offices can provide advice and other technical assistance in connection with international transactions.

Central Bank's regulations also contemplate general banking rules, including limits on credit, indebtedness, capital requirement, reserves, liquidity, and net worth requirements. Many of the

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requirements of the Central Bank mirror the risk-weighted criteria provided in the Basel Committee on Banking Supervision guidelines.

The FEA provides the regulatory framework for commercial banks, investment banks, mortgage banks and finance companies. It also regulates savings and loan companies for housing and other real estate ("*sociedades de ahorro y préstamo para la vivienda y otros inmuebles*") and credit associations (commonly known as *"Cajas"*), which generally have limited functions and a smaller impact on the market.

The FEA sets out the scope of permitted activities that may be performed by each type of financial entity. All financial entities may receive term deposits, make temporary investments in high-liquidity assets, and act as dealers or agents in transactions within the scope of their permitted business activities. Commercial banks may engage in any financial or banking activity that is not prohibited by the FEA or by the Central Bank's regulations, and are the only type of financial entities that may accept sight deposits and offer checking accounts.

2. Financial Trusts

The enactment of Law No. 24,441 in December 1994 introduced a new alternative for the granting of guarantees in Argentina, with the creation of financial trusts. A trust is defined as the situation whereby a person (creator) conveys the trust ownership (fiduciary ownership) of specific properties to another (trustee) that binds itself to hold said property for the benefit of the person specified in the trust agreement (beneficiary) and to transfer said trust once a specified period of time has elapsed or upon the happening of a certain condition, to the creator, the beneficiary, or the final recipient.

Section 19 of Law No. 24,441 created the financial trust, which is defined as the trust agreement subject to the general rules of a trust in which the trustee is a financial institution or a business organization specially authorized by the Argentine Security Exchange Commission ("CNV") to act as financial trustee, and the beneficiaries are holders of certificates of participation in the ownership of the trust estate or of debt securities backed by the properties so transferred. Said certificates of participation and debt securities shall be deemed securities and may be placed by public offering.

The CNV is the enforcement authority in matters relating to financial trusts, having the power to establish regulations. Pursuant to CNV regulations, the following are the entities allowed to act as financial trustees: (i) financial institutions; (ii) holders of marketable bonds' representatives; (iii) securities' registries; and (iv) corporations registered before the Registry of Financial Trustees held by the CNV.

The issuer of the certificates of participation or debt securities may require authorization for a public offering to the CNV. The issuer may require authorization for the implementation of a global program up to a maximum amount. To obtain said authorization, the issuer shall file a prospectus with information on the trustee, conditions of issuance, a description of the certificates of participation or debt securities, subscription period, the assets put in trust and the price of subscription, among other items.

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The certificates of participation shall be issued by the trustee. Debt securities backed by the properties held in trust may be issued by the trustee or by third parties, as the case might be. The certificates of participation and debt securities must be issued in registered form, transferable or not, or in book-entry form. It is worth mentioning that according to current Argentinean regulations, it is not possible to issue bearer securities. Said instruments are used for the securitization of mortgages, chattel mortgages and other securities.

The main differences between the financial trusts and common trusts are the following: (i) the fact that the trustee in a financial trust is a financial institution or a business organization specially authorized by the CNV; and (ii) certificates of participation and debt securities can only be issued with respect to financial trusts.

On August 1, 2008 Decree 1207 eliminated the tax benefit consisting on deducting distributed earnings from the taxable base of the income tax for financial trusts and closed-end mutual funds. However, financial trusts related to infrastructure works for public services will continue to hold such benefit.

Additionally, there is an exemption on debits and credits banking accounts established for financial trusts and common investment funds.

3. Leasing Agreements

In May 2000 Law No. 25,248, regulating leasing agreements, was enacted. Under a leasing agreement, a person (lessor) conveys the right to use a specific property to another person (lessee), against payment of a rent and grants to the lessee a purchase option for a specified price.

The object of the leasing agreement may be personal or real property, trademarks, patents or industrial models and software, owned by the lessor or with respect to which the lessor has the authority to lease and sell.

The amount and frequency of each rental payment shall be determined by agreement between the lessor and the lessee. The price at which the purchase option may be exercised shall be specified in the leasing agreement or set in accordance with agreed procedures or guidelines.

The property object of the leasing agreement may be: (i) purchased by the lessor from a person indicated by the lessee; (ii) purchased by the lessor following lessee's specifications, catalogues, brochures or descriptions identified by the latter; (iii) owned by the lessor prior to entering into the leasing agreement with the lessee; or (iv) purchased by the lessor from the lessee under the same agreement or prior to its execution.

The leasing agreement shall be executed by means of a public deed if its object is real estate property, vessels or aircraft. In all other cases, it may be executed by means of either a public or private instrument. In order to have effects *vis-à-vis* third parties, the leasing agreement must be registered in the appropriate registry according to the nature of its object.

The lessee may use the property in accordance with its purpose, but it may not sell, encumber, or dispose of the property. Expenses for its maintenance and use, including insurance, taxes, and charges imposed on the property and the penalties resulting from its use are the sole responsibility of the lessee, except otherwise agreed.

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G. Insurance Entities

Insurance and reinsurance activities in Argentina are mainly regulated by Law No. 20,091, as amended, and by the various resolutions issued by the National Insurance Agency (*Superintendencia de Seguros de la Nación* or "SSN").

Insurers and reinsurers must be licensed and authorized to operate by the SSN, which is a federal agency in charge of regulating and supervising the insurance business and the operation of insurance companies in Argentina. Argentinean residents may not contract policies provided by insurers or reinsurers that are not authorized to operate by the SSN. An insurance contract executed with an insurer not authorized to operate by the SSN is void and unenforceable in Argentina.

The SSN's supervisory authority includes:

(a) authorizing insurers to conduct specific types of business, their insurance plans, and the terms and conditions of their policies;

(b) evaluating the solvency and insurance expertise of the insurers' shareholders, directors and syndics; determining the applicable minimum capital requirements; overseeing the insurers' financial condition; regulating the categories and amounts of permitted investments; and authorizing mergers and transfers of portfolios; and

(c) the ability to impose fines on, or suspend or revoke licenses of, insurers and oversee their liquidation proceedings.

Transfers of participations in insurers are also subject to the prior approval of the SSN, unless it involves less than five per cent (5%) of the insurer's capital stock. In addition, the SSN regulations contemplate certain required minimum capital that insurers must comply with. Currently, the minimum capital requirement for a life insurer ranges between AR$ 2M and AR$ 4M, depending on whether it includes a mathematical reserve or not.

Only the following types of entities may be authorized to operate as insurers or reinsurers in Argentina:

(a) corporations (*sociedades anónimas*), cooperatives (*cooperativas*) and mutual insurance companies (*mutuales*);

(b) branches or agencies of foreign companies, cooperatives and mutual insurance companies; and

(c) state-owned entities.

If an insurer breaches the applicable law or regulations or does not comply with the SSN's directives, the insurer may be subject to the following penalties: (a) oral warning; (b) written warning; (c) a fine ranging from 0.01 per cent to 0.1 per cent of the total amount of premiums and additional sums accrued in the previous fiscal year, subject to a minimum of 0.5 per cent of the minimum required capital; and (d) suspension of its license to operate for up to three (3) months in one or more lines of business or the revocation of its authorization to operate as an insurer, in case of adverse developments in the insurance business or a decrease in its economic or financial capacity.

The authorization granted by the SSN to operate as an insurance company may be revoked by the SSN when:

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(a) the insurer does not commence operations within a term of six months after the relevant authorization was granted;

(b) the insurer does not take appropriate measures in case of a loss of the required minimum capital;

(c) the insurer does not comply with its by-laws, or appoints unsuitable persons as directors, syndics, administrators, etc.; and

(d) in case of the insurer's dissolution or liquidation.

Insurers' liquidation may be voluntary or involuntary. A voluntary liquidation takes place at the insurer's request. The procedure is carried out by the insurer's management and overseen by the SSN. An involuntary liquidation results from the revocation of the insurer's license by the SSN and may be ordered by the courts. In such case, the SSN acts as liquidator and the procedure is carried out in accordance to the provisions of the Bankruptcy Law No. 24,522, as amended.

III. INVESTMENT REGULATION

Argentina has established several regulations in order to promote foreign investment. These regulations include several Bilateral Investment Treaties (BITs). Each regulation provides certain guarantees, and together they are directed to provide foreign investors with adequate protection for their local interests.

A. Foreign Investment Act

Foreign investment is regulated in Argentina by Law No. 21,382 enacted in 1976 ("FIA") as amended by Law No. 22,208 enacted in 1980, Law No. 23,697 of 1989 and Law No. 23,760 of 1990. In September 1993 the Executive Power enacted Decree 1853/93, approving the new updated text of the FIA.

The FIA carries three basic principles which are highlighted by Decree 1853/93. Foreign investors may invest in the country in any economic activity -industrial, mining, agricultural, commercial, financial, provision of services or others related with the production and exchange of goods and services- without the need of any type of prior approval, and under conditions equal to those applicable to domestic investors (FIA section 1, Decree 1853/93, sections two and four). There are no activities excluded from this principle -except for certain specific exceptions such as broadcasting or the acquisition of real estate in border areas- nor is there any type of obligation of being associated with domestic investors or other type of restriction or condition.

Foreign investors have the right to repatriate their investments and to remit profits abroad at any time (FIA section five, Decree 1853/93, section five). In this connection it must be noted that capital repatriation is presently limited due to Central Bank foreign exchange regulations limiting the purchase of foreign currency by non-Argentinean residents to a monthly cap, among other restrictions. Please refer to Chapter V to this effect.

The principle of equal treatment between domestic and foreign investors is reaffirmed (FIA sections one and nine, and Decree 1853/93, sections seven and eight). Those foreign investors making capital investments in Argentina for the promotion of economic activities, or the extension or improvement of those already existing activities, have the same rights and obligations which are conferred by the National Constitution

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and local legal provisions to domestic investors.

Decree 1853/93 eliminated the former need of prior approval of those agreements concerning transfer of technology and licensing of trademarks, patents and industrial designs, executed between a local company of foreign capital and the foreign company directly or indirectly controlling it. Said agreements must be filed with the National Institute of Industrial Property ("INPI") for information purposes so that tax effects established by local acts and the treaties ratified by Argentina related to the avoidance of international double taxation apply.

B. Bilateral Investment Treaties

All guarantees available under the FIA have been reinforced and improved by the Bilateral Investment Treaties (BITs) entered into by Argentina during the 90s[9].

BITs have been designed to encourage foreign investments, providing investors with a safe environment in which to develop their businesses, through several guarantees and commitments which are voluntarily assumed by the host State. These guarantees deal both with foreign investor protection issues and dispute resolution clauses, providing for an international arbitration *fora*, at the investor's option.

BITs generally include the following relevant principles:

- Fair and equitable treatment, full protection and legal security, which require the host State to provide foreign investors with a stable and predictable investment environment. Government measures challenging the stability of the investment environment by changing the rules and creating uncertainty, for example, may constitute a breach of the referred to standards of treatment, particularly if they contradict the reasonable expectations based of which investors were induced to act

- The exclusion of arbitrary or discriminatory measures, which prevents the host State from impairing the management, use and enjoyment of foreign investments

- National treatment, which assures that the foreign investor shall be subject to a treatment not less favorable than that granted to domestic investors, and the most favored nation treatment, by means of which the host State shall recognize any better treatment which was previously granted to third State investors and investments

- Prompt, adequate and effective compensation in case of nationalization, expropriation or measures tantamount to expropriation, regardless of the form, intent or purpose of such measures

- Free transfer abroad of liquid assets belonging to foreign investors, comprising dividends and other current profits, loans and capital repatriations

[9] Thus far, Argentina has signed BITs with the following list of countries/regional blocks: Algeria, Armenia, Australia, Austria, Belgium, Luxembourg, Economic Union, Bolivia, Bulgaria, Canada, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Finland, France, Germany, Guatemala, Hungary, India, Indonesia, Israel, Italy, Jamaica, Korea, Lithuania, Malaysia, Mexico, Morocco, Nicaragua, Panama, Peru, Philippines, Poland, Portugal, South Africa, Romania, Russian Federation, Spain, Sweden, Switzerland, Thailand, The Netherlands, Tunisia, Turkey, Ukraine, United Kingdom, United States, Venezuela and Vietnam. BITs concluded with Senegal, Greece and New Zealand have been approved but are not yet in force.

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- Some BITs include the obligation to respect specific undertakings in connection with foreign investors of the other contracting party (the so-called "umbrella clause"), elevating the host State's breaches of contractual rights to the level of breaches of an international obligation under the B-Neutral forum for investment disputes, consenting the submission of all controversies which may arise between the investors and the contracting party to the treaty to the jurisdiction of an international arbitration court or tribunal, at the investor's choice. The main aim of BITs protections and guarantees is to prevent or overcome any prejudice or restrictions which the host State may impose on foreign investment in its territory, either by means of particular or regulatory measures. For this purpose, it must be noted that that BITs supersede domestic acts, according to both international and domestic rules

Internationally, the principle has been incorporated into Section 27 of the Vienna Convention on the Act of Treaties, which states that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. The Vienna Convention was ratified by Argentina by means of Law No. 19,865. Internally, this principle can be found in the Argentinean Constitution (Section 75 paragraph 22) and has been repeatedly acknowledged by the Argentinean Supreme Court.[10] Accordingly, in case of conflict, BITs and international law should prevail.

C. Recent Argentinean Experience

In recent years Argentina has adopted certain measures that have impaired the use, management or enjoyment of foreign investments made in its territory since the late 1980s (most of them in the context of the massive privatization program implemented in the 90s).

Some foreign investors affected by said measures have invoked the applicable BITs' framework in search of protection. Accordingly, they have brought their investment disputes before international arbitration tribunals, either under UNCITRAL Arbitration Rules, or, more frequently, before the International Center for Settlement of Investment Disputes (ICSID).

The ICSID is an institution designed to facilitate the settlement of disputes between States and foreign investors, under the system established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. ICSID depends on the World Bank and has its seat in Washington D.C. The Convention has been ratified by Argentina by means of Law No. 24,353 and entered in force on November 18, 1994. The ICSID Convention provides for a neutral and effective jurisdictional forum to solve investment disputes.

A large number of such proceedings against Argentina are currently under way.

D. Foreign Exchange

1. General Outlook

Following the 2001 economic and financial crisis, Argentina implemented strict control over foreign exchange transactions that entailed restrictions on the acquisition of foreign currency by Argentinean and non-Argentinean

[10] Argentinean Supreme Court, in *re:* "Ekmekdjian v. Sofovich", decision dated July 7, 1992, "Cafés La Virginia S.A.", decision dated October 13, 1994, among others.

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residents and on the inflows and outflows of capital from Argentina (both regulations are related since there are no transfers abroad in Argentinean pesos). Decree 260/02[11] established a single free exchange system whereby exchange transactions can be made at the parties' freely agreed upon exchange rate, subject to the restrictions established by the Argentinean Central Bank.

Pursuant to the Central Bank's regulations, exchange transactions can only be effected by entities authorized by the Central Bank to operate in foreign exchange ("Authorized FX Traders"). In addition, all exchange transactions require an exchange contract to be executed with the relevant Authorized FX Trader in which the parties must disclose the purpose of the underlying transaction. Copies of the exchange contracts must be made available for the Central Bank, which is able to analyze them and to request information from the Authorized FX Traders and the customers in order to verify whether the funds were in fact used for the purpose disclosed there under. Exchange contracts are considered sworn statements.

The underlying principle of exchange regulations is that no transaction may be made if it is not expressly authorized by those regulations, and that all transactions must be supported by relevant documentation which must allow the Authorized FX Trader involved in the transaction to verify whether exchange regulations are being complied with. Transactions not complying with exchange regulations are reached by the Criminal Exchange Law No. 19,539, as amended.

2. Inflows of Funds into Argentina

Pursuant to Decree 616/2005[12], as regulated by the various Communications issued by the Central Bank, funds entering into Argentina may only be transferred abroad after a 365-day term counted from the date the funds were converted into Pesos has elapsed[13]. Accordingly, financings must typically have a minimum duration of one year. In addition, all inflows and outflows of currencies from the Argentinean exchange market must be registered with the Central Bank by the Authorized FX Trader involved in the transaction.

Decree 616/2005 also subjects funds entering into Argentina to a 30% "withholding" that must be transferred to registered non-transferable interest-free deposits with Argentinean banking entities during a 365-day term (i.e., 30% of the funds entering into Argentina must be automatically withheld by the Authorized FX Trader and allocated to this mandatory deposit). Pending such term, funds held in deposit cannot be disposed by any means nor used as collateral for any transaction.

This mandatory deposit is generally applicable to the following transactions:

1. "External" financings, i.e., financings granted to Argentinean residents by non-Argentinean residents to be repaid abroad. The mandatory deposit is not applicable to the primary issuance of securities, external financings with certain multilateral and bilateral lending agencies and with official lending agencies, and external financings aimed at the acquisition of certain non-financial assets or related with imports and exports.

[11] Issued on February 8, 2002.

[12] Issued on June 9, 2005.

[13] Decree 285/03, issued on June 26, 2003, had previously stated a 180-day term.

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According to the Central Bank's regulations, only assets that are registered in the balance sheet of the companies as "durable goods" –machinery and equipment– (*bienes de uso*) or inventory (*bienes de cambio*) and "exploitation rights" (*derechos de explotación*) qualify as "non-financial assets" for purposes of this exemption. In addition, external financings aimed at the acquisition of non-financial assets must have a minimum duration of two years on average considering principal and interest payments.

2. Transfers by non-Argentinean residents except for "direct investments" (as this term is used internationally[14]), which comprise the acquisition of participations in local companies[15] and assets located in Argentina that qualify as "direct investment."

3. Repatriation of capital by Argentinean residents for the surplus exceeding USD 2M per calendar month.

Inflows by non Argentinean-residents that are applied to the payment of certain taxes and contributions are exempt from the mandatory deposit.

3. Outflows of Funds from Argentina

The various regulations issued by the Central Bank have relaxed restrictions imposed on outflows of funds from Argentina, particularly regarding financings repayments, and payments of services, commercial debts and dividends.

Repayment of external financings is generally permitted provided that the relevant financing complied with the applicable exchange regulation (the minimum duration and the 30% mandatory deposit) and was disclosed by the debtor pursuant to a certain information regime established by the Central Bank. In addition, prepayment of debts with non-residents domiciled abroad is permitted provided that certain conditions are met[16].

Payment of profits and dividends to foreign shareholders (or other foreign partners) resulting from financial statements certified by external auditors is permitted, irrespective of the sums involved. Services rendered by, and commercial debts owed to,

[14] The concept and characteristics of "direct investment" is detailed in point 359 of the Fifth Edition of the Balance of Payment Manual of the International Monetary Fund: "Direct investment is the category of international investment that reflects the objective of a resident entity one economy obtaining a lasting interest in an enterprise resident in another economy. (….) The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor on the management of the enterprise. Direct investment comprises not only the initial transaction establishing the relationship between the investor and the enterprise but also all subsequent transactions between them and among affiliated enterprises, both incorporated and unincorporated".

[15] Pursuant to the Central Bank's regulations, the mandatory deposit must remain until the capital contributions are capitalized or the shares acquired are transferred to the investor, which must be proven to the Authorized FX Trader in charge of the transaction. In addition, said regulations provide that in order to be exempted from the mandatory deposit, local companies must prove the "final capitalization" of the contributions within 190 days as from the date in which the relevant filings with the Public Registry of Commerce are made. In case the final capitalization of the capital contributions does not take place within the aforementioned term, the companies shall constitute the mandatory deposit within ten business days following a 180-day period counted as from the date in which the relevant filings with the Public Registry of Commerce are made.

[16] The financing must have been outstanding during the applicable minimum duration and the payment to be made must not exceed the then debt's present value. The debt's present value is calculated by discounting the future principal and interest payments at an annual effective interest rate equal to the implicit interest rate of the 180-day-U.S. Dollars-futures in the Argentinean self regulatory markets (according to Communication "A" 4354, issued on May 26, 2005, as amended).

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non-Argentinean residents, may be paid with no limitation.

The Central Bank's regulations allow repatriations of capital by non-Argentinean residents resulting from the disposal of "direct investments" in the Argentinean non-banking sector provided that the relevant direct investment has been maintained by the by non-Argentinean resident for at least one year[17]. Capital repatriations are subject to a USD 2M monthly cap when they result from the winding-up of a company and to a USD 500,000 monthly cap when they result from the liquidation of portfolio investments. Except for these exceptions, purchases of foreign currency by non-Argentinean residents are subject to a monthly cap of USD 5,000[18].

Consequently, as of the date of this document:

1. Inflows of funds are typically subject to a 30% mandatory deposit, including external financings.

2. External financings aimed at the acquisition of certain non-financial assets, related with imports or exports, or granted by multilateral and bilateral lending agencies or official lending agencies are generally exempt from the mandatory deposit.

3. Transfers of funds into Argentina by non-Argentinean residents are subject to the 30% mandatory deposit unless they are aimed at "direct investments."

4. Transfers of money abroad for the repayment of interest and capital of external financings are subject to no restrictions provided that the relevant financing was taken, and disclosed to the Central Bank, in accordance with the applicable foreign exchange regulations.

5. Transfers of money abroad for the payment of profits and dividends corresponding to financial statements certified by external auditors are subject to no restrictions.

6. Purchases of foreign currency by Argentinean residents are limited to a monthly cap of USD 2M.

7. Purchases of foreign currency by non-Argentinean resident are limited to a monthly cap of USD 5,000 except in certain cases of capital repatriation in which higher caps are applicable.

E. Transfer of Technology

All agreements signed between a licensor domiciled abroad and a licensee domiciled in the country which have effect in Argentina and in which the main or incidental objective is the transfer, assignment or licensing of foreign technology or trademarks in exchange for valuable compensation are governed by Law No. 22, 426.

The term "technology", as defined by the Law, encompasses all patentable inventions, industrial models and designs and any other technical knowledge applicable to the manufacturing of a product or the rendering of a service. Transfer of technology agreements must be filed with the INPI for information purposes only.

There are no limitations concerning any of the following issues: the amount of royalties which can be paid, terms of

[17] Pursuant to Communication "A" 4129, issued on June 9, 2005 and regulated by communication "A" 4359, as amended.
[18] According to Communication "A" 3661.

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duration, clauses limiting the licensee's level of exports or excluding the licensor's product liability, submission to foreign jurisdiction, etc. However, terms and conditions of the agreements between related parties (mainly between controlling and controlled companies) should be in accordance with the arm's length principle.

The proceeding of registration with the INPI should be initiated by the local party. For that purpose three copies of the agreement must be filed, together with a sworn statement containing, among other information, the following: name and domicile of the parties, licensor's participation in the licensee's capital stock, description of the technology and/or trademarks which are being licensed or transferred, number of employees of the licensee and estimated payments which shall be made under the agreement.

Agreements which are not filed with the authorities are, notwithstanding the requirement of filing, valid and enforceable. However, the licensee will not be able to deduct royalties paid as expenses for income tax purposes and the total amount of royalties will be considered taxable income with respect to the licensor and therefore subject to a withholding of 35% according to articles 92 and 93 of the Income Tax Act.

If the agreements are registered thus filed with the INPI, payments made by the licensee will be deductible for income tax purposes and only a portion of such payments will be considered income taxable in the country: In agreements dealing with technical assistance, consulting and engineering services which are not obtainable in Argentina as judged by the INPI, only 60% of the valuable compensation will be considered net income subject to a withholding of 35%. Consequently, the effective tax rate will be 21% on the gross amount.

In the case of all other transfer of technology agreements (sale or licensing of patents, trademarks, industrial models and designs and know-how), 80% of payments will be considered net income subject to a withholding of 35%. In this case, the effective rate will be equal to 28% on the gross amount.

Argentina has entered into double taxation agreements with several countries (See X. A.2). Agreements signed with European countries and those signed with, Canada and Australia foresee fixed withholding tax on royalties paid to residents of those countries which are lower than those established by the Argentinean income tax law.

F. Anti-Corruption

Argentina is a Member State of: (i) the Inter-American Convention against Corruption ; (ii) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and (iii) the United Nations Convention against Corruption. The main laws and regulations are:

- Criminal Code, sections 256 to 259

- Law No. 25,188 (Ethics within the exercise of Public Duties)

- Decree No. 41/99 (Ethic Code of Public Duties)

- Law No. 25.164 (Rules of National Public Employment)

- Decree No. 1162/00 (Liability of Public Employees to Report Public Crimes in the exercise of their duties)

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- Decree No. 1023/01 (Regime of National Administrative Contracts)

- Decree No. 436/00 (Rules For The Purchase or Sale of Property And The Hiring of Public Services)

- Ministry of Economy Rule No. 834/00 (General Rules and Conditions for the Hiring of Public Property and Services)

- Rules or conduct codes applicable to specific governmental entities (tax authority, police, nuclear regulatory authority, etc)

In particular, it must be noted that the Criminal Code criminalizes active and passive bribery to local or foreign public officials, with imprisonment from 1 to 6 years. If the recipient is a judge, the maximum punishment for the offeror shall be 12 years, while the punishment for the public official shall be from 4 to 12 years. In all cases, disqualification from public service may also apply.

In addition, the Criminal Code sanctions illicit enrichment crimes with imprisonment of up to 6 years and fines of up to 100% of the value of the enrichment, and disqualification from public service.

A bill has been recently introduced in Congress, inter alia (i) extending criminal liability to companies for unlawful acts committed by its employees, proxies and other persons acting in the entity's benefit; and (ii) clarifying the definition of "foreign official" in corruption crimes.

G. Anti-Money Laundering

Anti-Money Laundering is regulated by Law No. 25,246 (the "Anti-Money Laundering Act"). Money laundering is deemed a criminal offense and is defined as the exchange, transfer, administration, sale, encumbrance or any other use of money or assets with an aggregate value of more than AR$ 50,000 obtained through a crime, by a person who did not take part in such crime.

The Anti-Money Laundering Act created the Financial Information Unit (*Unidad de Información Financiera* or "UIF") which is a special governmental agency responsible for monitoring compliance with the Anti-Money Laundering Act. In addition, the Anti-Money Laundering Act imposed a series of obligations to certain individuals and legal entities including financial entities, exchange agencies, broker-dealers, insurance companies, brokers and agents, and several public agencies.

In accordance with the Anti-Money Laundering Act, those persons are obliged to:

(i) request from their customers documentation proving their identity, domicile and other basic data;

(ii) report to the UIF any "suspicious transaction," which is considered any transaction that is unusual, lacks economic or legal justification or involves an unjustified complexity, taking into account market practice; and

(iii) refrain from disclosing to the customer or third parties any information concerning such suspicious transactions and any proceedings carried out under the Anti-Money Laundering Law.

The UIF has issued several resolutions regulating activities such as the scope of key terms contained in the Anti-Money Laundering Act (such as "customer"), guidelines identifying

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unusual or suspicious activities, internal policies to be implemented by the obliged persons, and a non-exhaustive list of unusual or suspicious activities, which is regularly updated.

IV. TRADE REGULATION

A. Official Structure

The main authority governing Argentinean trade policy is the National Secretariat of Industry, Trade and Small and Medium Sized Companies ('the' ITSMC Secretariat').

The tax authority, AFIP, drafts customs rules, regulations, and tariff schemes, and supervises the Customs Office in order to make tax evasion policies more effective.

The Customs Office is responsible for the administrative application of the Customs Code[19], which establishes specific policies and procedures governing foreign trade, including the entry, exit, transportation, and control of goods and international transport.

Other agencies relevant to the importing process include: (i) the Ministry of Public Health and Social Welfare, which handles the registration of pharmaceuticals and other health products, prior to importation; (ii) the Industry Under secretariat, which supervises the automobile industry and importation of vehicles; (iii) the Secretariat of Agriculture, Cattle, Fishing and Food, which regulates agricultural, cattle, fishing and food imports; and (iv) the National Foreign Trade Commission ("NFTC"), which investigates dumping and unfair imports.

B. General Regulations

Argentinean customs procedures have traditionally been extensive and time-consuming. In order to change this situation, the local Customs office has introduced a data processing system allowing for quick cargo clearance and payment of duties referred to as "Sistema María".

Furthermore, Argentina has implemented an automatic system for the selective control of merchandise. In this direction, goods may go through one of three different channels: green channel (no inspection), orange channel (documentation inspection) and red channel (subject to physical and documentation inspections).

The channel assignments are made according to the goods involved. For instance, if the goods are subject to specific controls (i.e. pharmaceutical drugs, guns, etc.), they will be submitted to the "red channel". On the other hand, if the goods are not necessarily subject to specific controls, then the channel will be assigned randomly among the three.

C. Tariffs and Other Import and Export Charges

1. Import Tariffs

Basic tariff rates applied to the CIF (cost, insurance, and freight) value of imports, for most of the tariff lines, range from 0% to 35% (ad valorem duties).

In all cases, duties are established by identifying goods in accordance with their respective harmonized codes under Mercosur Common Code provisions, which are based on the Harmonized Commodity Description and Coding System for classifying goods and assigning tariffs.

[19] Law No. 22,415, as amended.

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An additional 0.5% is imposed as statistical tax on all products originated in countries not belonging to the Mercosur, including Mercosur Associated Countries Bolivia, Chile and Venezuela.

2. Other Levies

Additional charges on imports include a 21% value-added tax (VAT) applicable to CIF values, in addition to tariff and statistical tax (VAT is applied to all products regardless of whether they are imported or produced in Argentina). A 10 % advance payment on VAT (except for capital goods imported by final users) must be effected on the date of entry, which is credited upon final payment. Likewise, there is a 3% anticipated profit tax on all consumer goods (deductible from net profit tax).

According to section 3 of Decree 618/1997, AFIP is entitled to enter into collecting agreements with provincial tax authorities, as well as to act in final imports of goods as a collector agent (*agente de percepción*) of local taxes levied on the consumption or commercialization of goods. In accordance with these agreements, AFIP, through the Customs Office, must collect the turnover tax upon final imports carried out by importers domiciled and registered as direct taxpayers in a given jurisdiction.

As a result of these agreements, AFIP General Resolution No. 1,408/2003 states that importers registered in jurisdictions that have collecting agreements with the AFIP are subject to an advance turnover tax of up to 1% of the VAT taxable base.

Excise taxes may also apply to specific products such as cigarettes, whisky, hard liquor, beer, soft drinks, etc. All taxes must be paid for and registered before Customs grants clearance.

3. Export Tariffs

Basic tariff rates applied to FOB (free on board) value of exports for most tariff lines range from 5% to 40%. In the case of imports, duties are established by identifying goods by means of their harmonized codes contained in the MCC.

D. Unfair Practices

During the past 20 years, foreign trade relations, between Argentina and other countries, have undergone considerable expansion. Accordingly, countries and companies have developed different trade practices and actions aimed at the attraction towards, and at the same time, the defense, of their domestic markets.

In some cases, these actions were reasonable and accepted by other countries and companies in the different markets, while other actions were deemed unfair due to their exclusionary effect. The latter are hereinafter referred to as “offensive” actions.

Antidumping and countervailing duty investigations seek to remedy, not punish, unfair pricing of imported merchandise. If such actions are successful, they do not lead to the direct payment of compensation or award of damages to domestic producers. Rather, if the imported product is determined to have been dumped or subsidized and to be the cause of economic injury to the domestic industry producing a like product, import duties are assessed to offset the level of dumping (measured as the amount by which the price in the exporting country exceeds the price in the importing country) or the amount of

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subsidies (equal to the economic benefit conferred to the foreign exporter by the subsidy).

1. Argentinean Legal Framework

In 1992 Argentina signed the General Agreement on Tariffs and Trade related to antidumping issues and countervailing duties, which was incorporated into the Argentinean legal system by means of Law No. 24,176, and in turn was regulated and put into practice by the Argentinean Executive Power pursuant Decree 2,121/04. Such resolutions were also adopted within the framework of the WTO Uruguay round by means of Law No. 24,425 (regulated by Decree 1,326/98).

In addition, Decree 1,219/06 allows the authorities to use a "third country market economy" as a reference on pricing. Essentially, it allows authorities to compare domestic prices of the specific product in the third country with how those prices changed when similar products are imported/exported to Argentina in order to determine whether the latter are lower than the former. This is the first step the Decree uses to determine whether dumping exists.

These regulations spell out the legal standards to which trade is subject to and the procedures to be followed in case of dumping practices.

The national authorities in charge of investigations of dumping practices are (i) the NFTC, and (ii) the Fair Trade Department ("FTD").

The NFTC is a decentralized body of the ITSMC Secretariat which falls within the scope of the Ministry of Economy and Public Finance. The NFTC is in charge of carrying out investigations related to the existence of injurious imports and the potential damages to the national industry.

The FTD is a body in charge of investigating the existence of dumping practices or subsidies belonging to the Under secretariat of Commercial Policy, which in turn belongs to the ITMSC Secretariat.

2. Investigations and Claims. Proceedings

An investigation is commonly initiated by a petition filed with the investigating authorities on behalf of a domestic "interested party", which is usually either a producer of a given product with respect to which an investigation is required, or a trade association of companies that produce said product. The company/ies and/or the trade association(s) of companies filing such application must represent at least 25% of the local production of the good(s)/imports of which are expected to be investigated.

Petitions must be filed with the FTD jointly with the specific allegation of the dumping or subsidy, and the evidence supporting those claims. The FTD then evaluates the formal validity of the filing (with prior notice to the NFTC so that the latter may render its opinion regarding the petitioner's qualification).

Once the conditions for admissibility have been met, the case is sent to the NFTC so that it may evaluate the existence of the alleged damage to the national industry. Both the FTD and the NFTC must render an opinion regarding the commencement of the investigation within the scope of their jurisdiction. After all relevant considerations have been made, the case is submitted to the ITM Secretariat so that it may rule on the initiation of the formal investigation on the merits of the case.

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Actions may be filed by the FTD as a matter of cause provided that there is at least preliminary evidence of offensive actions.

Once the investigation commences, the NFTC will seek to determine whether any damage to the national industry was affected, while the FTD may take the same course of action regarding the determination of the existence of dumping or subsidy. For such purpose, ad hoc interrogative forms will be prepared by the authorities for the investigated companies. Such forms must be filled by the investigated companies within 30 business days. Within four months from the initiation of the investigation, the competent authority must submit its conclusions regarding the need to establish precautionary measures to the Ministry of Economy and Public Finance. Provisional measures cannot be applied unless a preliminary determination as to (i) the existence of dumping, subsidy, or damage has been made, and (ii) a link between the offensive action and the damage has been established.

When the aforementioned issues are established, the involved companies are served notice so that they may render an opinion on such decision. The information submitted by the parties may be verified by the authority abroad, in which case the parties must fully cooperate and, if required, pertinent authorization by the foreign government will be necessary.

In addition to this, both the NFTC and the FTD may conduct hearings in order to examine any allegation or objection, within the scope of their attributions.

Towards the end of the investigation, the NFTC submits a report to the FTD, which must include a brief description of the international system applicable to the industry under analysis, the elements which determine the relationship existing between the anti-competitive conduct and the damage caused, the value of imports under anti-competitive practices, market perspectives in the absence of corrective measures, the market reaction as a result of the application of measures and their effects on consumers, and lastly, a recommendation on the measures to be taken.

Subsequently, the FTD renders its conclusions, which are based on those made by the NFTC and by its practice areas. Such conclusions are then submitted to the Ministry of Economy and Public Finance so that it may issue a final ruling. The latter must be published in the Official Gazette.

Actions shall not extend for a term longer than the one established by the WTO, and the applicable rights shall be valid (subject to review) for five years provided they are necessary to prevent dumping and to protect the national industry from damage arising there from. The aforementioned rights shall not exceed the margin represented by the dumping or subsidy.

Final resolutions may be appealed by means of an action to be filed with the judicial courts.

E. Restrictions and Prohibitions on Imports

Argentina's efforts to liberalize its economy have resulted in the lifting of many controls and restrictions on imports. Only a few are still in force. The list of goods subject to restrictions, special requirements or prohibitions is broad and constantly subject to review. Therefore, it is advisable that a customs broker be consulted before

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sending goods which may otherwise be retained at Customs.

1. Used Capital Goods

Importation of used capital goods and equipment is restricted; some of such imports are subject to a 28% duty rate (there are some exceptions) and a Customs inspection to certify that the goods have been adequately reconditioned and updated as to be acceptable, and to verify the valuation criteria which have been applied. Such used articles must carry certifications from the supplier attesting to the type, degree and quality of reconditioning of the equipment, confirmed by the Argentinean embassy in the country of origin of those goods.

2. Import Permits

Certain hazardous or otherwise controlled items, such as pharmaceutical drugs, foods, health products, explosives, firearms and ammunition, require an import permit which must have been previously issued by the pertinent local office. These permits usually require a similar certificate from the exporting country and the granting thereof may be subject to delays, so special care should be taken.

3. Sanitary Certificates

Most food and health related goods require a sanitary certificate in order to be allowed into Argentina. Additionally, an Argentinean Act requires that all shipments of livestock, plants, bulbs, cuttings, rhizomes, roots, and tubers for propagation be accompanied by a sanitary certificate issued by the specialized authority from the exporting country. The same requirement applies to grains and plant products (such as barley and peanuts) and all seeds – with the exception of coffee and cocoa beans imported for immediate roasting. Salted and dried fish must also be covered by a sanitary certificate.

4. Licenses and Permits

Argentina requests three kinds of import licenses, one for automobiles and two for general consumer goods, generally known as (a) Previous Automatic Imports License (PAIL); and (b) Previous Non Automatic Import License (PNIL). Automobile licenses must be requested by the importer at the ITM Secretariat. PAILs may be obtained by the importer's customs broker through the "Maria System", while PNILs (currently applying to an increasing number of products) need to be requested from the Secretariat of Industry. Average PNILs' request proceeding term ranges from 60 to 120 days.

F. Free Trade Zones and Special Customs Area

Argentina has free trade zones in the city of La Plata, a province of Buenos Aires, and in the provinces of San Luis, Tucumán, La Pampa, Córdoba, Entre Ríos, Corrientes, Santiago del Estero, Misiones, Santa Cruz, Salta and Mendoza. There are plans to develop free trade zones in other provinces as well.

The province of Tierra del Fuego is a Special Customs Area that allows duty-free imports of capital goods not produced in Argentina and planned for use in high-priority industries, as well as of goods to be assembled in plants located in Tierra del Fuego and for sale in continental Argentina.

G. Temporary Admission Regime

There are several temporary admission regimes that allow goods to

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be imported free of duties, as long as they are afterwards re-exported. In all cases a bond covering import duties must be presented.

1. Capital Goods

These goods may be subject to temporary importation for a period of up to three years. They must be used in the production of other goods or services.

2. Intermediate Goods

Raw materials, intermediate goods and packaging to be used in exports can be imported for a period of up to one year. Exports using these products must be completed and ready for exportation within a year from the admission of the inputs. This period of time may be extended for an additional year. A bond must be posted for a value covering the approximate amount of duties and other charges for the regular importation of the items. The bond is canceled when the merchandise is re-exported.

3. Other Goods

Other goods that might be needed for temporary use inside Argentinean territory can be imported for a period of up to six months. Different time limits (always under six months) are applied to commercial samples, goods for shows or competitions, professional tools for a temporary passenger, etc.

V. STRUCTURES OF DOING BUSINESS

A. Commercial Companies and Branches

There are basically three kinds of legal entities by means of which commercial activities may be carried out in Argentina: the corporation, the limited liability company and the branch of a foreign company. There are other kinds of entities created by statutory law, but they will not be covered in this report due to their little practical use.

The applicable rules are comprised in the Argentine Commercial Companies Act 19,550 ("ACCA"), which is applied nationwide. State law complements and sets forth rules for registration and other requirements. In Buenos Aires, state rules are enacted by the *Inspección General de Justicia* or "IGJ".

In addition, public companies are subject to regulations issued by the CNV, the local securities exchange commission. On May 22, 2001, the CNV enacted Decree 677/01, captioned "Regulation for Transparency of Public Offering" (the "Decree"). One of the main purposes of the Decree has been to include provisions related to market transparency and the protection of investors in public companies. A summary of the main provisions contained in the Decree is also included below.

B. Corporation ("S.A.")

The corporation is the most commonly used legal entity in Argentina. It is used for the development of all kinds of activities and businesses.

Its main characteristics are the following:

- Shareholders: at least two shareholders are required. The ACCA does not establish minimum or maximum equity percentages that a person is allowed to own in a local company or corporation. However, the current IGJ's criterion is that a sole shareholder cannot own more than 98% of the equity, unless certain

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conditions occur (e.g. the minority shareholder does not exercise pre-emptive rights *vis à vis* an increase in stock capital).[20]

Shareholders can be domestic or foreign companies, or individuals. There are no nationality or residence requirements. Shareholders' liability is limited to the full payment of their capital contributions.

- Shares: the stock capital is divided into shares. Shares must be nominative, non-endorsable and may or may not be represented by certificates. The issuance and ownership of certificate and non-certificated shares stems from records in the company's shares registry book, or from the records of a third party commissioned for that purpose (e.g. *Caja de Valores S.A.)*.

- Capital: a minimum stock capital of at least AR$ 12,000 is required. Resolution 7/2005 of IGJ provides that the stock capital must be appropriate for the development of the corporate purpose. Therefore, the IGJ may require that companies attain higher stock capital. At least 25% of the capital must be paid in at the time of incorporation, and the remaining amount within the next two years. When the consideration for the stock is other than cash, subscriptions must be paid-in in full.

- Shareholders meetings: Unless shareholders meetings are unanimously held, which means that 100% of the capital stock is present at the meeting and all resolutions are voted affirmatively, meetings shall be summoned by means of publications for a period of five days in the Official Gazette, and in specific cases, in a nationwide newspaper, at least 10 days and no more than 30 days in advance from the date the meeting was scheduled to be held.

With respect to companies that trade their shares publicly, the summons to the shareholders' meeting shall be published for five days as well, at least 20 days and no more than 45 days in advance from the date the meeting is scheduled to be held. These dates are dictated by the last day of publication of the previous advertisements. Twenty days prior to the date the shareholders' meeting is scheduled to be held, the board shall submit to the shareholders, at the corporate domicile or by electronic means, all relevant information regarding the shareholders' meeting, the documents to be discussed and the proposals of the board.

Shareholders' meetings may be ordinary or extraordinary. This classification is based on the issues to be transacted at the meeting, regardless of the date or the frequency the meetings are held. The ordinary shareholders' meetings agenda includes the discussion and approval of the financial statements, the appointment of directors and their fees, and the payment of dividends, while all other businesses, e.g. the amendment of the by-laws, mergers or spin-offs, must be transacted at extraordinary shareholders meetings.

In public companies, the following matters shall be decided at shareholders' meetings as well:

(i) the sale, and/or granting of liens or security interests over all or a substantial part of the company's assets, when those acts are not within the ordinary course of business; and

[20] The resolutions and criteria of the IGJ are only applicable to companies registered within the jurisdiction of the city of Buenos Aires.

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(ii) the entering into administration or management agreements of the company.

Shareholders may authorize another person who is not a director, employee or syndic of the relevant company to act on their behalf as a proxy at the meetings. According to recent IGJ's criteria, in the case of foreign companies, only their registered agents or a proxy appointed by said registered agent can represent them at the meetings. In other words, the foreign company should not appoint a proxy directly, but through the registered agents. However, this criterion has been contested successfully at the courts.[21]

The quorum and the voting rules for ordinary and extraordinary shareholders' meeting are as follows:

[21] Court resolutions are only applicable to the particular case, but they constitute a precedent for suture resolutions of the IGJ.

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Type of meeting	Number of call	Quorum	Majorities
Ordinary	First	Majority of voting shares	No less than the absolute majority of votes present
	Second	Any number of shares present at the meeting	
Extraordinary	First	60% of voting shares, or higher as set forth in the by-laws	No less than the absolute majority of votes present
	Second	30% of voting shares, or as set forth in the by-laws	
Special matters (change of domicile to another jurisdiction, change of corporate purpose, merger, dissolution, etc.)			Majority of voting shares and all shares are entitled to cast only one vote, regardless of if certain shares have been issued with more than one vote.

- Board of directors: the board is in charge of the management of the corporation. There is no requirement of a minimum number of members. Thus, the board may be comprised of only one director, with the exception of certain corporations (i.e. section 299 companies, for instance those which capital exceeds AR$ 10M, publicly held companies or public utilities). Boards of Section 299 companies must be comprised of at least three members.

There are no nationality requirements for being appointed as director, nor it is required that directors be shareholders. However, the absolute majority of directors appointed must reside in Argentina. The Board must appoint a president, who has the use of the signature and company seal. Appointing one or more vice-presidents is optional. The quorum for board's meetings is the absolute majority of members, and resolutions are made as provided in the by-laws.

With regard to public companies, the members of the Board of directors have additional duties, which may be classified in the following categories:

(i) public offering duties;

(ii) duties to inform and to maintain secrecy; and

(iii) duties of loyalty and diligence.

- Public offering duties. Directors and members of the surveillance body must inform the CNV and self-regulated entities[22] of: a) any fact or

[22] Stock exchanges authorized to list negotiable securities, in adherence to the provisions of Act

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situation which, because of its importance, is capable of substantially affecting the underwriting of negotiable obligations or the course of the negotiation thereof; and b) holdings of shares, debt securities and debt certificates.

- Duty to maintain secrecy. This duty demands that certain persons who are identified under certain CNV resolutions, including directors and syndics of corporations, as having information regarding a fact which has not been publicly disclosed and that, because of its importance, may be capable of affecting the price of a company's securities, keep strict secrecy and refrain from negotiating the same until the information becomes public.

- Duties of loyalty and diligence. Directors, administrators and syndics of public companies must:

1. make the corporate interest of the company and common interests of all its partners (to maximize the company's profits) prevail over any other interest, including the interest of the person or persons controlling the company;

2. refrain from procuring any personal benefit on behalf of the listed company, other than the normal compensation for their office;

3. organize and implement preventive systems for the protection of corporate interests, so as to reduce the risk of permanent or occasional conflicts of interest in the course of their personal relationship with the company, or other persons affiliated with the company in connection with the latter. These duties refer, in particular, to activities in competition with those of the company, the use or disposal of corporate assets, the determination of compensations or proposals related to the same, the use of non-public information, the taking of business opportunities in their own benefit or in benefit of third parties and, in general, any situation causing, or that may cause a conflict of interest affecting the public company;

4. procure adequate means to carry out the activities of the company and exercise internal control such as may be necessary to guarantee a prudent management, and prevent non-compliance of duties imposed by the CNV and self-regulated entities;

5. act with the diligence of a "good business man" in the preparation and disclosure of information obtained in the market and oversee the independence of external auditors.

- Auditing committee: The Decree provides for the mandatory creation of an Auditing Committee in the case of those companies making public offering of their shares. The Committee is to be formed by three members of the Board. The majority of the members shall be independent. In order to be qualified as independent, the director must bear this condition both with respect to the company and the controlling shareholders and shall not carry out executive activities within the company.

The following are the empowerment and duties of the Auditing Committee:

On a regular basis:

(i) give an opinion regarding

17,811 and its amendments, forward and option markets, and other non-stock entities authorized to act as self-regulated entities by the CNV.

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proposals made by the Board for the appointment of external auditors to be hired by the company, and to oversee their independence;

(ii) evaluate the services provided by the external auditors;

(iii) evaluate and inform the shareholders about external auditors fees' and the amount of said fees corresponding to auditory duties and special duties;

(iv) supervise the performance of the internal control systems and of the administrative-accounting system, as well as the trustworthiness of the latter and of all the financial information and other relevant events submitted to the CNV and to self-regulated entities pursuant to the applicable information regulations;

(v) oversee the application of the policies on information regarding the company's risk management activities;

(vi) provide the market with complete information on transactions regarding a conflict of interest with the members of the corporate bodies or controlling shareholders may exist;

(vii) give an opinion with respect to the reasonableness of fee proposals and stock options of directors and administrators of the company raised by the administrative body;

(viii) give an opinion on the fulfillment of legal requirements and reasonableness of the conditions of issuance of shares or securities convertible into shares, in the case of a capital increase where preferential rights may be limited or excluded;

(ix) verify the fulfillment of the provisions regarding directors' conduct which may be applicable;

(x) give justified opinions regarding transactions with related parties in the cases set forth in the Decree; and

(xi) prepare annual plans of activities for the fiscal year, to be presented to the board and surveillance body.

Directors, members of the surveillance body, managers, and external auditors shall be obliged, as per the request of the Auditing Committee, to attend its sessions and to provide collaboration and access to the information which may be available. The Committee may request the counsel of attorneys and other independent professionals and hire their services on behalf of the company within the budget, which to that effect may be approved by the shareholders meeting. The Auditing Committee will have access to all information and documentation that may be deemed necessary for the fulfillment of its obligations.

- Syndic: the syndic is an officer of the corporation entrusted with the task of supervising that the corporation's acts are in accordance with the law and the by-laws. He/she is required to be an attorney or accountant. Appointment of the syndic is not mandatory, except for certain corporations (i.e. those whose stock capital exceeds AR$ 10M, are publicly held or public utilities). If syndics are not appointed, it is mandatory to appoint alternate directors.

When the company is included in the cases described under Section 299 of the ACCA (with the exception of cases

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included in Subsection 2, whose stock capital exceeds AR$10M) it must have a surveillance committee.

General resolution No. 516 of the CNV approved the minimum contents of the Corporate Governance Code to be adopted by public entities.

Companies shall file a report on the compliance of the Corporate Governance Code along with the directors' annual report. This report has to include a statement on whether or not the recommendations of the Code have been followed and, if applicable, state the reasons for the non-compliance.

General resolution No. 544 of the CNV extended the term for filing the report on the code along with the annual report for an additional three months. Consequently, for the fiscal year that ended December 31, 2008, reports can be filed separately.

C. Limited Liability Company ("S.R.L.")

The SRL is the second most commonly used legal structure after the corporation. Its principal characteristics are:

- Quota holders: there must be a minimum of two and a maximum of 50 (also, a single quota holder cannot own more than 98% of the stock capital). No nationality or residency requirements apply. Their liability is limited to the full payment of the equity subscribed.

- Stock capital is represented by "quotas". There is no minimum capital requirement, as opposed to the corporation. However, the stock capital must be appropriate for the development of the company's purpose. The stock capital must be subscribed in full and 25% shall be paid in at the moment of the incorporation. The balance must be paid within two years. If the quotas are paid by means of contributions of property other than cash, then all the quotas must be paid in full, at the time of incorporation.

- Management: the management of the S.R.L. may be performed by one or more managers, acting individually or jointly as set forth in the articles of incorporation. There is no nationality requirement. In case the managers act jointly, or in case there is only one manager appointed, then the absolute majority of all managers must reside in Argentina.

- Syndic: the appointment of a syndic is not mandatory unless the S.R.L.'s stock capital reaches certain minimum figure – currently AR$ 10M.

- Quota holders' meetings: resolutions are adopted as set forth in the by–laws. For amendments to the by-laws, if a sole partner represents the majority vote, it is required that an additional partner affirm the vote..

D. Participation in the capital stock of a corporation or S.R.L.: registration as a foreign company

Foreign companies interested in either incorporating local companies or owning equity in local companies must, in accordance with Section 123 of the ACCA, be registered with the Public Registry of Commerce ("PRC"). For that purpose they must file with the IGJ:

- A copy of the articles of incorporation, by-laws and amendments;

- The certificate of incorporation (good standing) in the country of incorporation, issued by the

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appropriate authorities, or similar documents certifying that the company is validly existing according to the law of the country where it was formed; and

- The resolution appointing a registered agent in Argentina granting the relevant power of attorney and fixing a local domicile for legal purposes.

In accordance with Resolution 7/2005 of the IGJ, foreign companies shall also:

- Inform whether or not the company is subject to prohibitions or legal restrictions to conduct the activities related to its corporate purpose in its place of incorporation; and

- Show that the foreign company meets any of the following conditions: (i) owns one or more agencies, branches or permanent representations outside Argentina (ii) owns equity in companies located abroad if the investment qualifies as non-current asset; or (iii) owns fixed assets in its country of incorporation or outside Argentina.

Additionally, Resolution 7/2005 of the IGJ requires that foreign companies report on their shareholders.

Resolution 7/2005 of the IGJ also requires that foreign companies keep the registration current by filing documents showing that they own assets outside of Argentina and report on the identity of their shareholders.

According to Resolution 7/2005 of the IGJ, in case a foreign company, which has already been registered or will be registered with the Public Registry of Commerce, is incorporated for the sole purpose of being a vehicle for investing in other companies, and consequently cannot comply with General Resolution IGJ 7/2005, compliance can be achieved if its controlling company complies with the aforementioned resolution and files the following documentation with the IGJ:

- A declaration of the Board of directors or shareholders meeting of the controlling and the controlled company informing that the investing company is only a vehicle for investing in other companies;

- The documentation required by Resolution 7/2005 of the IGJ; and

- A statement of a representative of the foreign company informing: (i) the structure of the group of companies; and (ii) the personal information regarding the partners of the investing and the controlling companies.

Pursuant to the provisions of General Resolution 12/05 of the IGJ, foreign companies which have economically significant and internationally known business carried out abroad may be exempted from filing the documentation set forth in Resolution 7/2005 if, in place thereof, such companies at any time file information that provides evidence of such status and complies with this requirement.

The information that may be filed according to the provisions of General Resolution 12/05 includes, on a non-restrictive basis: (i) commercial advertising made outside the Argentine Republic; (ii) any data related to businesses, projects or investments published in specialist magazines or in economy or business sections of international newspapers sold in the Argentine Republic; or (iii) excerpts from web pages or other information, certified by a Notary public, the sworn translation of which is not required in case the same are written in English,

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French, Italian or Portuguese and a Spanish summary of their contents is signed by the legal representative of the foreign company and registered with the IGJ.

With regard to the information to be filed on an annual basis, the companies which are not "widely known" will not be required to file in the future the documentation required by General Resolution No. 7/2005 if, having complied with it in the past, file a statement of the board of directors or person authorized by said board, by means of which it is declared that:

(i) There have not been substantial changes in the composition and value of the non-current fixed assets located outside Argentina and the economic volume and/or composition and value of the assets located outside Argentina; and

(ii) Due to the comparative significance of the aforementioned assets regarding the activity of the foreign company in Argentina, it is proved that its main activities continue being performed abroad.

Notwithstanding the aforementioned, the IGJ will be empowered to require an accountancy certificate of the net worth of the company if it considers it necessary due to the importance of the activities of the foreign company in Argentina or the amount of its participation in local companies.

E. Branch

Foreign companies may use a branch to perform businesses or activities in Argentina.

- Capital: there is no need for the branch to have a specific amount of capital, with the exception of branches acting in certain industries such as banking or insurance.

- Management: only a legal representative duly authorized to operate the branch must be appointed.

- Accountancy: the branch must carry separate accounting from its head office, and file annual financial statements with the Public Registry of Commerce.

Branches must also comply with Resolution IGJ 7/2005 or, if applicable, with the information regime regarding investment vehicles. Consequently, the same documentation must be filed with the IGJ by the time of its registration and on an annual basis.

VI. ACQUISITION OF AN ARGENTINEAN BUSINESS

A. Introduction

There are basically two ways of acquiring a local company, namely, the purchase of stock or assets. The choice between one and the other will depend upon the circumstances of the target company on the basis of the following considerations:

Since the purchase of shares implies the continuity of the legal entity, it is clear that the most relevant risk is associated to hidden liabilities, particularly tax ones. Sometimes this risk can be reasonably measured after a due diligence process and covered by appropriate guarantees in the stock purchase agreements;

On the other hand, the asset purchase option provides reasonable protection against past hidden liabilities through the procedure of sale of going concerns foreseen in the Law of Transfer of Going Concerns 11,867

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and federal and provincial tax regulations;

The advantages of the stock purchase approach are that the transaction itself is much easier and less expensive than the asset purchase, particularly from a tax standpoint.

The election between one of the above mentioned structures of acquisition is not always easy because it is affected by contradictory objectives: on one hand, there is the intention to protect the purchaser from hidden liabilities and, on the other, to reduce the costs inherent to the transaction, especially those that are tax-related.

Additionally, it is worth mentioning that shares of public companies may also be purchased in the stock market through a tender offer. This procedure is regulated by the CNV. However, the relatively small number of companies listed in Argentinean securities markets and the small percentage of its total number of shares being publicly traded makes this procedure only of interest to majority shareholders willing to purchase the remaining shares in ongoing private transactions.

B. Legal Implications of Each Alternative

1. Stock Purchase

There is no specific regulation as to the provisions of a share purchase agreement and, therefore, the parties are free to negotiate and agree on its terms, subject to the general rules applicable to contracts under Argentine law. From the perspective of the purchaser, it is important to mention that responsibility for hidden liabilities must be expressly established in the share purchase agreement because if no provision is stated in this regard, the prevailing doctrine arising from judicial precedents dictate that the seller cannot be held responsible for such liabilities.

From the tax standpoint the following considerations are to be taken into account:

- if the seller is an individual, whether or not resident of Argentina, any profit stemming from the sale of shares is not subject to income tax;

- if the seller is a local company or the local branch of a foreign company, gains arising from the sale of the shares (in case such activity is not carried out on a regular basis) are subject to income tax. No withholding tax is applicable on the payment of the price;

- if the seller is domiciled outside Argentina, any profit originated in the sale of shares is not subject to income tax;

- other tax that might be applicable is the stamp tax, which levies written agreements in certain jurisdictions.

No other taxes are applicable to stock purchases.

Once the parties accomplish the preliminary steps (due diligence, letter of intent, etc.) and the deal structure is agreed upon, they are ready to negotiate and execute the acquisition agreement. As anticipated under Chapter II, local law authorizes parties to choose the law governing the agreement, but this selection needs to be based on some reasonable point of contact with the transaction or the parties. Similar comments apply to the jurisdiction chosen by the parties (i.e., local or foreign, ordinary courts or arbitration), although this aspect is

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usually more flexible than the "applicable law" issue.

In order to cover the purchases or investments, security interests under Argentine law may be obtained through mortgages, pledges (including registered and floating pledges), security assignments and trusts. Such securities may be taken over movable and immovable properties, shares, cash and receivables.

A mortgage and/or a pledge will generally secure the principal amount, accrued interest, and other related expenses owed by a debtor to its creditor.

Regarding mortgages, under Argentine law, this security may be granted over real estate, ships and aircraft. All mortgages must be registered with the relevant public registry in order to become effective vis-à-vis third parties. In connection with pledges, the Argentine Commercial Code provides that unless the debtor and creditor agree upon a special sale proceeding, the pledged asset must be sold by public auction which shall be duly informed through the Official Gazette.

Furthermore, pledges over shares must be reported to the issuing company or the registrar (and must be recorded in the stock registry book of the involved company). Such pledge only takes effect vis-à-vis the company and third parties upon its registration in the aforementioned company's book.

2. Transfer of going concern ("TGC")

The purchase of all or part of a company's assets qualifies as a transfer of a going concern, governed by Law No. 11,867 (the "TGC"). Its purpose is to protect creditors from the transfer of the debtor's assets, which represent the guaranty of its credits.

The following considerations apply to this structure:

- the selling party is a local company, which will survive the sale.

- the purchaser of an on-going concern may identify and limit the liabilities that are transferred with the business. Such limitation will be granted if the sale of assets is implemented through the procedure set forth by the TGC.

- in most cases, the TGC involves the transfer of personnel. Labor regulations impose joint and several liability for the seller and the buyer of a TGC for labor obligations. In this case, there is no legal mechanism to avoid such liability for the purchaser, which should be properly covered by the usual representations and warranties in the TGC agreement. However, one should note that employees of the going concern company may or may not be transferred to the new owner of the business, but the employees have the right to remain with their prior employer if they so wish. The seller and the purchaser may not constrain the employees to accept the transfer to a new employer. Normally, when the employee does not wish to be transferred, he/she would be terminated after the payment of all applicable severance indemnities.

- The TGC provides for a special procedure, which basically consists of the announcement of the transfer in certain publications so the creditors have the opportunity to oppose to it, unless they receive full payment of their credits or satisfactory guarantees of their cancellation. Lack of compliance with the described procedure does not affect the validity of the transaction, but the buyer will be jointly responsible with the seller for the debts of the going concern up to the amount of the price.

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- Under tax law, and insofar as federal taxes are concerned, a specific notification must be given to the authorities within 15 workings days before the transfer of going concern takes place. The tax authority has a three-month term to assess undetermined liabilities. After that period has elapsed without any assessment by the tax authorities, the buyer is released from any responsibility arising from those contingent liabilities. It is worth mentioning that the said three-month period starts to run from the moment buyer takes over the acquired business, which raises the risk of potential claims that would make the acquisition of the business inconvenient. In order to diminish said risks, the transaction should be structured in such a way that would allow the purchaser to "return" the business to the seller. In any case, these structures are not free from complications and extra costs turn them difficult to implement in certain circumstances.

The tax regime applicable to a TGC is the following:

- *Income tax*. The seller will be subject to the payment of income tax if a profit arises as a consequence of the sale of the going concern. In order to determine the existence for such eventual profit, income tax law provides for specific rules of valuation of the different assets of the going concern

- *Value added tax*. This tax will be applicable on the transfer of movable goods, but not to the transfer of real estate. Presently the tax rate is 10,5% or 21% depending on the type of assets.

- *Stamp tax*. The TGC agreement could be subject to this tax in accordance with the rules described above for the share purchase agreement.

- *Turnover tax*. This local tax applies to movable property (like inventory) other than fixed assets, and is calculated on the gross revenue of such property. The applicable tax rate is on average 3%, depending on the type of transaction and province in which the same takes place.

In view of the foregoing, the conclusion is that the share purchase alternative is less expensive than the asset purchase, particularly from the tax perspective. However, the risk of hidden liabilities of the acquired company, especially those of a tax nature, is an evident drawback of this type of transaction. On the other hand, the TGC is more complicated and expensive, both from the standpoint of taxes involved and the formalities to be complied with. But if the procedure is properly accomplished, the TGC releases the buyer from the seller's business-related liabilities.

C. Merger Control

Economic concentrations are currently examined under the Competition Act 25,156, as regulated by Decree 89/2001 and amended by Decree 396/01. The National Commission for the Defense of Competition (“CNDC”) is the current enforcement agency. The CNDC currently reports to the Internal Trade Secretariat.

Merger control is exercised over all economic concentrations of enterprises. The latter is defined as the acquisition of control - both de jure and de facto- over one or more companies, going concerns or assets from which an independent turnover can be identified, by means of a merger, the transfer of a going concern, the

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acquisition of property or any share rights, when such acquisition gives the acquirer control or substantial influence over the enterprise, and any act or agreement which transfers to a person or economic group a decisive influence on the passing of resolutions related to the ordinary or extraordinary management of an enterprise.

Section seven of the Act prohibits economic concentrations whose object or effect may be to restrict or reduce competition, so that detriment to the "general economic interest" may occur. This last term is generally interpreted as a consumer surplus.

Mergers and acquisitions will be subject to control if the enterprise/s involved in the transaction (acquirer and target companies or merging parties, but not seller) have a turnover in excess of AR$ 200M in Argentina, unless a special exemption applies.

Acquisitions of enterprises in which the acquirer already owns more than 50% of the shares (or voting rights thereof) or intra-group transactions are not subject to control. The acquisition of a single enterprise by a foreign investor which has not owned shares or assets in Argentina is also excluded from the scope of merger control regulations. Additionally, acquisitions are exempted from notification when the amount of the transaction and the value of the assets located in Argentina being acquired, transferred or controlled do not exceed ARS 20M - unless in the last 12 months the transactions were entered in the same market which on aggregate exceed this threshold, or AR$ 60M in the last 36 months.

Concentrations falling under the Act must be notified to the CNDC for their review prior to or within a week from the date of conclusion of the agreement, publication of the purchase, exchange offer or the acquisition of a controlling participation, whichever happens first. All individuals or legal entities intervening in the transaction (i.e. buyer and seller) and if applicable, the target company as well, are responsible for filing. Penalties for failure to file can amount to up to AR$ 1M per day of delay.

Section 13 of the Act sets forth a waiting period of 45 business days, after which, the transaction is deemed tacitly approved. In practice, however, the reviewing period is extended for one year or more, as a consequence of the CNDC suspending the term every time it deems the filing incomplete. The implementation of the transaction must be suspended prior to clearance because the Act states that the transaction has no effect vis-à-vis the notifying parties, or third parties, until it has been approved (this issue is subject to debate though). The notifying parties may choose to make either a 'short-form filing' (Form F1) or 'long-form filing' (Forms F1 and F2).

The CNDC normally conducts its investigation by sending the notifying parties follow-up questions in written form, relating to any of the issues covered by the notification forms, consulting local and/or foreign databases, contacting customers and suppliers, holding hearings with competitors, etc. More complicated cases may require the carrying out of special market investigations or the obtaining of relevant information by subpoena.

With regard to the notified transaction and in addition to the application of fines for late filing as appointed above, competition authorities may:

- approve the transaction,

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- impose conditions, or

- prohibit the transaction.

Parties not complying with a resolution imposing undertakings or prohibiting a transaction are subject to the same fines which apply in cases of anticompetitive practices, inter alia, fines of up to AR$ 150M, to be doubled in case of recidivism.

Parties to a transaction have the right to judicial review of decisions blocking the transaction or imposing a sanction. As is the case with all regulatory agencies in Argentina, judicial review is unrestricted in scope. The competent court in the city of Buenos Aires is the National Criminal Court of Appeals in Economic Matters and the Federal Court on Civil and Commercial matters, while in the case of the provinces, the corresponding Federal Appellate Court will review the decision.

VII. DISTRIBUTION AND AGENCY

A. Distribution

Distribution agreements enable producers and importers to sell their products to distributors, who, in turn, resell the merchandise to third parties. These agreements are characterized by the fact that producers may exert a certain control over the business of their distributors, and that they are intended to constitute stable relationships spanning over long periods of time.

Distribution agreements are not regulated as a specific type of contract under Argentinean law, but have emerged as a distinct type of agreement in legal practice. They are written within the wide margins of contractual freedom. Non-written agreements are also valid.

Most common clauses include those defining a geographic area within which products shall be exclusively distributed (the obligation not to sell similar or competitive products within a certain area), establishing provisions relating to advertisement, and regulating payment and delivery conditions, minimum sales quotas or goals, etc.

Termination of distribution agreements by the producer is a matter of concern. Courts have ruled that such termination, when it is not foreseen in a written contract and the distributor is not given sufficient prior notice, is unlawful and justifies the adjudication of substantial indemnification in favor of the distributor. Therefore, when drafting these agreements, it is essential to stipulate the corresponding term of duration and to specify early termination conditions as clearly and precisely as possible.

Effective termination of these agreements, even due to the expiration of a term agreed to in writing, may also be called into question when certain facts, such as successive extensions or renewals of contracts, may be interpreted as provoking the conversion of fixed-term agreements into agreements of an undetermined duration, or may give grounds for a claim based on what is commonly referred to as the “abusive exercise of a right”.

When distributors are individuals, the eventual risk of them being considered workers must be thoroughly analyzed.

B. Agency

An agency agreement is one whereby one party charges the other with the task of promoting the former’s business within a defined zone. It may involve the empowerment of the agent

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to close deals in the principal's name, but such is not always the case.

As with distribution agreements, these agreements have not been specifically foreseen by Argentinean law, but became customary by commercial practice and are now "regulated" by a substantial number of legal precedents.

Essential clauses are those relating to the agent's fees, areas, exclusivity and termination issues.

Conclusions on the perils related to termination of distribution agreements are also applicable to agency agreements.

As mentioned above, when agents are individuals, the potential risk of them being considered workers must be carefully considered prior to closing.

VIII. SECURITY INTERESTS

Argentine law recognizes two types of creditors: secured and unsecured. Secured creditors may hold a general privilege on all of the debtor's estate or a special privilege on specific property of the debtor. While general privileges are created by law only, special privileges may be created by contract. Security interests in Argentina are typically created through mortgages, pledges and collateral trusts, depending on the type of collateral involved in the transaction.

Unsecured creditors do not hold any of the privileges recognized for secured creditors; therefore, their guarantee is represented by the whole of the estate of the debtor and they obtain no payment until all secured credits are satisfied.

A. Mortgages

Mortgages may be established over real estate, ships and aircraft, which are assets that typically remain in the debtors' possession. Mortgages have no effect unless they comply with certain formal requirements and are registered in the relevant public registries. Mortgages secure the principal amount, accrued interest, and other related expenses owed by a debtor to the creditor.

1. Mortgages over Real Estate

Mortgages over real estate may only be created by means of notarized deeds executed before a notary public, and must be registered with the Public Real Estate Registry to become effective *vis-à-vis* third parties. Mortgages over real estate may only be governed under Argentine law, according to the Argentine Civil Code. However, mortgages may secure debts denominated in foreign currency and guaranty debts instrumented by agreements governed under foreign law.

A mortgage remains in full force and effect until amounts secured by the mortgage have been paid in full. However, a mortgage's registration with the Public Real Estate Registry automatically expires at the 20th anniversary of its registration, unless it is renewed by the creditor. If the registration expires, the mortgage (and the security interest created thereby) has no effects *vis-à-vis* third parties.

A mortgage creates a mortgage lien upon the title to the real property being mortgaged. The annotation of the mortgage with the Public Real Estate Registry establishes the priority of the mortgage lien with respect to most other liens on the property's title. Liens that have been attached to the title before the mortgage lien are said to be senior to, or prior to, the mortgage lien.

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Those attaching afterward are said to be junior or subordinate. The purpose of this priority is to establish the order in which lien holders are entitled to foreclose their liens in an attempt to recover their debts. If there are multiple mortgage liens on the title to a property and the loan secured by a first mortgage is paid off, the second mortgage lien will move up in priority and become the new first mortgage lien on the title.

Foreclosure of a mortgage is affected through a special summary proceeding which provides for the sale of the property through a public auction. The debtor may file only certain limited defenses in these proceedings and any claims of the debtor not included in these defenses must be made in a separate and ordinary proceeding before the court. Foreclosure may be conducted by out-of-court proceedings.

Mortgage loans are recourse loans: if the funds recouped from sale of the mortgaged property are insufficient to cover the outstanding debt, the lender does have recourse to the borrower after foreclosure.

2. Mortgages over Ships and Aircraft

Mortgages over ships (*hipotecas navales*) are regulated by the Navigation Law No. 20,094, as amended and supplemented. In order to effect *vis-à-vis* third parties, mortgages over ships must be registered with the National Ship Registry in accordance with Law No. 19,170 (as amended and supplemented), which foresees the requirements for mortgages' registration. The registration lapses for the duration of the principal obligation. Law No. 20,094 grants, however, a minimum registration term of three years. The parties can renew the registration before the expiration of the term of the principal obligation or of the minimum three-year term, as the case may be. Priority granted by mortgages covers principal and interest accrued for up to two years prior to the foreclosure.

Mortgages over aircraft are regulated by the Argentine Aeronautical Code, as amended and complemented, and certain international treaties ratified by Argentina, including the 1948 Geneva Convention on the International Recognition of Rights in Aircraft. Aircraft and its engines may be subject to mortgage rights even if the aircraft is undergoing construction. In order to have effects *vis-à-vis* third parties, mortgages over aircraft and engines must be registered with the National Aircraft Registry. The registration lapses for seven years unless renewed by the parties.

Aircraft and ship mortgages grant creditors a priority right according to its registration order that prevails over unsecured credits. However, mortgages over aircraft and ships are subordinated to certain priority rights that are listed in article 476 of the Navigation Act and chapter VII of the Argentine Aeronautical Code which are directly related to the auction, maintenance and rescue of aircraft and ships.

Mortgages over ships and aircraft grant the right to sell the encumbered assets in foreclosure proceedings. In case of bankruptcy liquidation (*quiebra*) or reorganization (*concurso preventivo*) proceedings, certain mandatory filings must be made with the relevant court before any foreclosure proceeding takes place.

B. Pledges

Argentine law mainly recognizes two types of pledges: ordinary pledges

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(which may be civil or commercial) and registered pledges. In the ordinary pledges, the pledged asset must be delivered to the creditor or placed under the custody of a third party. In the registered pledge, the pledge is registered with the Public Registry of Registered Pledges and the pledged asset remains in the debtor's possession. Both type of pledges grant the creditor a priority right on the proceeds of the sale of the collateral.

Under Argentine law, creditors are not allowed to keep or take possession of the asset given as collateral. In the case of commercial pledges, foreclosure of the assets must follow the procedures set out in the relevant agreement which may contemplate an out-of-court foreclosure (not permitted in the case of civil pledges). If no procedure is contemplated, foreclosure must follow the procedure provided in the Commercial Code.

Pledges do not require a public deed in order to be established. It is customary to have the pledges executed in private instruments with signatures authenticated by a notary public.

1. Registered Pledges

As explained above, registered pledges permit pledgors to retain the possession of the pledged asset. Argentine law recognizes two types of registered pledges: "fixed pledges" and "floating pledges". Fixed pledges affect only the relevant registered assets while floating pledges affect the original pledged goods and the goods derived from their transformation or replacement. In each case, the amount of the pledge is limited to the amount of the secured obligation.

Registered pledges must be established using the forms provided by the Registry of Pledges, and must be filed with the Registry of Pledges to become effective *vis-à-vis* third parties.

The certificate evidencing the pledge may be transferred by endorsement and the endorsement must then be registered with the Registry of Pledges in order to become effective *vis-à-vis* third parties. The original debtor as well as each endorser thereto shall be jointly and severally liable to the endorsee. The creditor's privilege with respect to the pledged assets terminates upon payment of the obligation or five years after registration of the pledge, unless a new registration for a further five-year period is filed by the creditor (the consent of the debtor is not required for the new registration).

Pledge certificates, which are delivered by the relevant public registry, grant the right to initiate summary enforcement proceedings.

2. Pledges of Shares

Pledges of shares are governed by the Commercial Code and by the Companies Law. Although the pledge of shares is an ordinary pledge, the pledge of shares must be registered in the company's stock ledger to become effective *vis-à-vis* third parties. Likewise, the pledge of quotas of a limited liability company must be registered with the relevant Companies' House to become effective *vis-à-vis* third parties.

The pledge grants the creditor a priority right over the proceeds of the sale of the shares. In the case of shares (or other securities) traded in stock markets, the shares or securities held as collateral may be sold through a stock broker the day after the pledgor has failed to comply with its obligations under the pledge.

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Unless the pledgor and pledgee agree otherwise, the pledgor retains all rights relating to ownership of the shares (such as dividend and voting rights) while the pledge is in force. The pledgee has the obligation to ensure that the pledgor has the ability to exercise such rights and the pledgor must indemnify the pledgee for any costs incurred in fulfilling this obligation.

C. Collateral Trusts

Securities may also be obtained by means of collateral trusts. A trust is defined as the situation whereby a person (creator) conveys the trust ownership (fiduciary ownership) of specific properties to another (trustee) that binds itself to hold said property for the benefit of the person specified in the trust agreement (beneficiary) and to transfer said trust, once a specified period of time has elapsed or upon the happening of a certain condition, to the creator, to the beneficiary, or the final recipient. Any type of assets may be transferred to a trust. The assets are held by the trustee as a separate estate which is not subject to bankruptcy proceedings of the creator, the trustee or the beneficiaries.

IX. INSOLVENCY AND BANKRUPTCY

Reorganization proceedings and bankruptcy proceedings are governed by Law No. 24,522.

A. Reorganization Proceedings

Both individuals and corporations, domiciled in the country as well as those domiciled abroad, regarding assets held within the country, may file for reorganization proceedings (*concurso preventivo*).

In all cases it is required that the debtor be insolvent. However, adjudication of insolvency abroad constitutes sufficient ground for the initiation of a reorganization proceeding within the country upon request of a creditor whose claim must be made effective in the Argentinean Republic.

A creditor who is payable abroad must demonstrate the existence of reciprocity rules with the country where the credit is payable. In other words, that creditor whose claim be payable in Argentina may be admitted, under the same conditions, in a reorganization proceeding based in said country.

The opening of reorganization proceedings includes an order prohibiting the disposal of property by the debtor and, in the case of companies, by members having unlimited liability.

Notwithstanding the foregoing, the debtor retains the administration of its property under the control of the Court-appointed Receiver and Creditors Committee.

Once the reorganization proceeding has been commenced, all creditors must prove their claims before the Receiver, who issues a report advising the Court on whether said claims should be admitted. The Court issues the final decision on the admission of the credits.

The main characteristic of the reorganization proceeding is that the debtor must present a reorganization plan which must be approved by at least two thirds of each class of creditors.

Should the majorities required for the acceptance of the reorganization scheme not be reached, when the

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insolvent debtor is a limited liability company or corporation, the law provides for the opening of a special record so that any creditor or third party interested in acquiring the shares of the insolvent company may file a reorganization plan as well. If no interested party has been registered within five days following the opening of said record, the court will declare bankruptcy.

The registered interested parties may propose a reorganization plan to the creditors. Should such proposals not be approved by the required majorities - the same which apply to the debtor's plan- or should said plan not be confirmed by the court, the latter must also declare bankruptcy.

If the creditor's plan is confirmed, the debtor's shares shall be transferred to the third party who proposed such plan and the latter must comply with the proposal made to the creditors.

B. Pre-packaged Proceedings (*Acuerdo Preventivo Extrajudicial*)

These proceedings allow a debtor unable to pay its debts or undergoing economic or financial difficulties to enter into an out-of-court repayment plan with all or part of its creditors. Once legal majorities, two thirds of the ordinary creditors, are reached, the debtor may request court approval. These approval produces have the same effects as those granted under regular reorganization proceedings.

C. Bankruptcy

A bankruptcy petition may be filed by the debtor or any creditor. Contrary to reorganization proceedings, the debtor is excluded from the administration of its assets, with the exceptions determined by law (which is vested in the Court Receiver). If the debtor is a company, bankruptcy may be extended to all members having unlimited liability.

Similarly, bankruptcy may, under certain conditions, be extended to third parties who, though apparently acting on behalf of the company, have disposed of the company's assets as their own property. It may also be extended to those individuals or legal entities controlling the bankrupt company and are considered as having abused said control.

Also, contrary to reorganization proceedings, the debtor cannot offer any repayment plan to its creditors. Creditors' claims are mainly paid with proceeds obtained from the sale of the debtor's assets, task handled by the Court and the Court Receiver and are supervised by a Creditors Committee.

X. TAX

There are three levels to the Argentinean tax system: federal, provincial and municipal.

The National Constitution sets forth the taxation powers of the federal and local governments, as well as the general tax principles and limitations. The main taxes are the following.

A. Federal Taxes

1. Income Tax

This tax is levied on the worldwide income of Argentinean residents (individuals or legal entities), and permanent establishments in Argentina of foreign companies. Non-residents are taxed only on income from Argentinean sources.

An entity (i.e. corporation) is deemed to be a resident in Argentina for tax purposes, and thus subject to tax on its

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worldwide income, if it is incorporated in Argentina.

Foreign individuals are considered residents and therefore subject to tax on their worldwide income if they stay in Argentina with a permanent visa –for immigration purposes- or with a temporary visa for at least 12 months. In calculating the 12-month period, temporary absences of up to 90 days, consecutive or not, are disregarded. However, foreigners who stay in Argentina for work for less than five are not considered residents and thus only subject to tax on Argentinean-source income

Individuals' taxable earnings include only their eligible gains and recurring income, which is income which may be derived on a periodic basis and which implies the permanence of the source producing it, Conversely, taxable income of companies and permanent establishments includes any non-exempt income or gains.

Residents have the right to credit taxes of a similar nature paid abroad against their income tax liability, to a maximum amount equal to the tax liability arising from such foreign-source income (i.e. ordinary foreign tax credit is available). Losses may be carried forward for a five-year period and a basket limitation applies to foreign source losses and losses arising from the disposal of shares and other interests.

The progressive rates applicable to individuals range from 9% to 35%. The highest rate applies to taxable income in excess of AR$ 120,000.

Companies and permanent establishments of Argentinean non-residents are subject to a flat 35% income tax rate.

For individuals, the fiscal year matches the calendar year. The fiscal period for resident entities is the commercial period established in its by-laws.

Argentina adopts the arm's length principle applicable to transactions between related parties and has developed detailed rules on transfer pricing, which require the making of a transfer pricing report, the submission of transfer pricing tax returns and the maintenance of the documentation thereof.

Payment of Argentinean-source income of non-residents is subject to a final withholding tax at the following effective tax rates:

- Interest on inter-company loans: 35% effective tax rate. The rate is reduced to 15.05% in cases where the lender is a financial entity –other than an off-shore one– in a jurisdiction not deemed to be a low-tax jurisdiction; or when the jurisdiction has concluded an information exchange agreement with Argentina and, according to its internal rules, no banking, capital markets or other secrecy systems apply.

- Royalties

- Patents, trademarks and know-how: 28% in general (other 35%).

- Copyrights: 12.25% under certain conditions. If those conditions are not met, the rate is 31.5%.

- Motion pictures: 17.5%.

- Technical assistance: 21%, 28% and 35% effective tax rates.

- Capital gains on movable or immovable property: generally 17.5% effective tax rate.

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- Rents of immovable property: 21% effective tax rate.

- Rents of movable property: 14% effective tax rate.

In connection with shareholders' income, as a rule, dividends paid out of profits subject to income tax are not subject to any further tax. An equalization tax is applicable at a 35% rate on dividends paid either to residents or non-residents when the dividends that are payable in cash or in kind exceed taxable profits accumulated at the end of the tax period preceding the distribution.

Capital gains on shares of non-residents are tax-exempt. If the shareholder is a local entity (i.e. investment by means of an Argentinean holding company), it is subject to income tax at the regular 35% rate on capital gains derived from the disposal of shares in other companies.

2. Double Taxation Conventions

The following countries have entered into comprehensive double taxation treaties with Argentina which are currently in force: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom.

Treaties in force with Latin American countries are based on the territoriality principle and follow in many aspects rules governing the Andean Pact. Treaties with European countries generally follow the guidelines of the OECD Tax Treaty Model. The treaties entered into in the last ten years, although OECD-Model oriented, are also related to the UN model and contain clauses enlarging the source-country taxing rights.

While in Argentina's treaties with Italy, France, Sweden and Germany the taxing rights on technical assistance fees generally pertained only to the residence country such as in the OECD Model Tax Treaty, in its more recent treaties with Spain, Canada, Finland, Great Britain, Sweden (1997), Belgium, Switzerland and the Netherlands (the "New Treaties"), taxing rights are shared with the source country as royalties also include income from technical, scientific, administrative or any other similar assistance. This results in a higher tax burden in the source country. Even so, due to the limitation imposed under the treaties to source country taxation (generally between 10% and 15% on gross payments), this burden is lower than that resulting from applying only the domestic rules.

Another change introduced in the New Treaties is that related to the existence of a permanent establishment with respect to the performance of consulting or other services in the source country. Argentinean negotiators have followed the U.N. Model Tax Treaty in the New Treaties regarding this type of income. Accordingly, the furnishing of services- including consulting services- by an enterprise of a treaty partner country in the other country (the "source country") may be deemed a permanent establishment if the activities of the non-resident company are carried out for a more than sixth months, in aggregate, within any twelve month period

This latter rule, as opposed to the OECD Model provision and most other treaties involving Latin American countries, exemplifies the trend of treaty negotiators drafting clauses for

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the purposes of improving tax revenue for the source country.

Provisions such as these make it even more important to review treaty provisions when analyzing tax implications of standard transactions such as a transfer of technology or technical assistance agreement.

Argentina has also signed several treaties for the avoidance of double taxation with respect to income arising from international shipping and/or air transportation.

3. Minimum Deemed Income Tax ("MDIT")

At the end of each tax period, this tax is levied on the value of assets located in Argentina and abroad belonging to companies domiciled in Argentina or abroad, which are held by companies domiciled in Argentina, permanent establishments of non-residents of the country, trusts organized under Law No. 24,411, and common investment funds, among others. The tax rate is 1%. Taxpayers with assets in the country the aggregate value of which do not exceed AR$ 200,000 are exempt from the MDIT.

Shares and other participations in the capital of local companies are exempt from this tax.

This tax is deemed to be payable in advance of the income tax in case the income tax is higher than the MDIT. If the MDIT of a given year is higher than the income tax, the excess may be carried over to the following ten tax periods and used as a credit towards the income tax liability exceeding the MDIT of the future tax period.

4. Value Added Tax (VAT)

Practically all economic transactions effected in Argentina are subject to this tax, which is levied on taxable supplies of goods and services in Argentina as well as imports of goods and services into the country. Exports of goods and services are zero rated. The exemptions are very limited generally restricted to educational services and international transportation.

The general rate is 21%. Certain transactions are subject to a reduced rate of 10.5% (i.e. interest payable to local financial institutions and to foreign financial institutions located in countries where the Central Bank has adopted the international supervisory banking standards approved by the Basle Bank Committee) and certain supplies are subject to a higher rate of 27% (i.e. certain gas, energy and water supplies).

In computing the VAT liability, input VAT may be credited against output VAT, so that only the value added to the taxpayer's supplies is taxed. VAT applies to each stage of the production or distribution of goods and services upon the value added during each of the stages.

5. Tax on Bank Accounts

This tax is levied at the general rate of 0.6% on each credit and debit incurred in bank accounts registered with financial institutions. Though the taxpayer is the holder of the account, the bank is responsible for paying the tax.

Certain fund transactions not executed through bank accounts are also subject to this tax at a 1.2% rate.

The tax on bank accounts may be computed as a credit for income tax and MDIT.

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6. Personal Assets Tax

This tax is levied on Argentinean residents (individuals and legal entities) with respect to their worldwide net wealth exceeding AR$ 305,000 at the end of each calendar year. It is also levied on individuals and legal entities located abroad in relation to their net wealth located in Argentina at the end of each calendar year. Furthermore, residents and non-residents are subject to the tax with respect to shares held in Argentinean companies. An ordinary foreign tax credit system is also available.

Individuals domiciled in Argentina are subject to the tax on all their assets exceeding AR$ 305,000. The tax rate varies from 0.5% to 1.25% depending on the amount of these assets.

For non-residents, the applicable rate is 1.25%.

With regard to shares and other interests held by residents or non-residents in Argentinean companies, the tax is payable by the issuing company at a flat rate of 0.5% on the pro-rata value of the securities according to the companies' net worth.

7. Excise Taxes

This tax is levied in one stage on the transfer and importation of goods specified by law (i.e. tobacco, alcoholic and non-alcoholic beverages, extracts, cellular and satellite phone services, luxury objects and engines) and on the rendering of specified services. Certain electrical appliances as well as certain electronic products are subject to the excise tax (e.g. air conditioning equipments; heating equipments; telephones and other devices for the transmission or reception of voices, images and other information; GPS'; among others). Excise taxes are levied at *ad valorem* rates based on the price of goods and services.

B. Local (Provincial) Taxes

1. Turnover Tax

The turnover tax is a local tax levied on the regular exercise of an economic activity. The taxable base is the turnover (e.g. gross receipts).

The relevant rates depend on the given jurisdiction and the activity carried out by the taxpayer. The tax rate average is 3%. Certain industrial activities may be exempt.

For activities carried out in more than one jurisdiction, there is a distribution system which is common to all, referred to as the Multilateral Agreement.

2. Stamp Tax

This is a provincial tax levied on the execution of acts and contracts in any Argentinean jurisdiction other than the province of La Rioja. It is payable in the jurisdiction in which the economic transaction is instrumented but may also be applicable in the jurisdiction in which it has effects. The tax rate may vary in each jurisdiction, but it is usually around 1.5% of the economic value of the transaction.

3. Real Estate Tax

This is also one of the most common provincial taxes and is levied on the value of the property held. Rates vary according to each jurisdiction. In some provinces this tax is collected by municipalities.

C. Local (Municipal) Taxes

As the scope of the municipal taxes is determined by each Provincial

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Constitution, municipal taxing rights generally encompass only those taxes levied as a consequence of services granted by the municipality. These taxes include those applicable to the granting of permission for starting an economic activity, taxes levied on security and health control of taxpayers' activities, taxes on the right to use public spaces and taxes on advertisements made in the municipality. Each municipality has its own tax system.

XI. IMMIGRATION

The hiring of foreign employees requires that the latter be granted an immigration permit from local authorities, since tourist visas do not allow foreigners to work under an employment contract with a local company.

There are three categories within which a labor visa may be granted:

(i) temporary residence by virtue of a contract entered into by the foreign employee with an Argentinean company;

(ii) temporary residence by virtue of the transfer of a foreign company's employee to a related Argentinean company;

(iii) temporary residence.

The first two options require a two-step procedure. First, the National Immigration Office must issue an entrance permit, the filing of which the local company initiates. Second, the foreign employee presents the permit and the required personal documentation at the Argentinean Consulate in his country of residence, after which the Consulate grants the labor visa. In both cases the labor visa is granted for a one-year renewable period.

The third option involves a considerably shorter yet costlier procedure. It is granted only on an exemption basis and for a fifteen-day renewable period.

XII. LABOR AND SOCIAL SECURITY

A. Introduction

Argentinean labor law is divided into three major areas: individual law, collective law and social security law.

Individual labor law regulates the relationship between an employer and an employee by means of (i) the Employment Contract Law; (ii) regulations that apply to specific professional categories (i.e. journalists, sellers of goods or domestic employees); and (iii) the applicable collective bargaining agreement, depending on the activity developed by the employer.

Collective labor law governs the relationship between unions, collective representatives of employees, and an employer or group of employers. The results of collective negotiations are collective bargaining agreements.

Finally, social security law establishes the mechanisms by which the public administration grants monetary or other compensation to workers in the event of death or disability due to labor and non labor illnesses or accidents, or retirement.

The fundamental principles of Argentinean labor law include the following: employees' inability to waive their labor rights, continuity of the employment contract, priority of reality, good faith, social justice, equity, non-

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discrimination, and gratuity of judicial proceedings.

B. Individual Labor

The parties to the individual labor relationship are the employee and the employer.

The employee must be an individual of working and legal capacity, and cannot be substituted in this relationship by any other person. An employee cannot be under 16 years of age, and minors under eighteen years of age require parents' express authorization in order to be employed.

The employer is the individual person or legal entity that hires the employee. According to the Employment Contract Act, an employer (company) is defined as an organization of personal, material and non-material resources for the attainment of benefits or economic purposes. A company may be comprised of one or various branches.

In case a company hires personnel for the provision of services to a third company, employees are considered direct employees of the hiring company. Temporary staffing companies are the exception to this rule, being specifically regulated by law and requiring formal authorization for the provision of their services.

In cases where a company hires another entity to perform part of its normal, ordinary and specific activities, it shall be jointly and severally liable for labor infringement vis-a-vis the latter's employees. This liability extends to any company that controls or is affiliated with the employee's formal employer.

The employment contract is the agreement between an employee and an employer where the employee offers his services to the employer in exchange for payment of a salary. Such an agreement is characterized by the legal, economic and technical subordination of the employee to the employer.

In principle, the employment contract does not require a specific form. In this sense, it does not need to be written to be valid. One exception, among others, is the fixed-term employment contract.

The employment contract is presumed to last for an undetermined period of time. The law allows for an initial trial period of three months, during which no indemnification is due for termination of the contract without cause (with the exception of payment of indemnification equal to fifteen days of salary due to lack of prior notice).

A special kind of employment contract to be executed for an undetermined period of time is the seasonal employment contract. Even though its term length is undetermined, the effects of the contract –rendering of services and payment of a salary- only take place during the corresponding season determined by the nature of the employer's activity (i.e., life guards).

Notwithstanding these rules, under special circumstances, the employment contract can have a limited duration. Such cases include:

(i) fixed-term employment contracts, in which a term is established in advance by the parties, said fixed term being justified under extraordinary circumstances.

(ii) temporary staffing contracts, in which a specific term cannot be pre-established, the term of the contract thus depends on the length of an

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extraordinary event (i.e., excess of seasonal work, performance of an extraordinary work, sick leave, maternity leave, replacements, etc.).

The National Government determines the minimum salary. It is currently fixed at AR$ 1,240. Companies collective bargaining agreement also establish minimum salaries (which must be above AR$ 1,240) to be paid to each category of workers.

According to the Employment Contract Act, every employee is entitled to a thirteenth salary paid as two semi-annual bonuses at the end of June and December each year.

Salaries are paid by deposit into the employee's bank account, which the employer must open on the employee's behalf. In certain exceptional cases, the salary may be paid by cash or check.

Fringe benefits have been specifically enumerated by the Employment Contract Act: they are reimbursement of medical expenses, supply of work clothing, reimbursement of nursery school tuition, provision of school supplies, training courses, and seminars and burial expenses. These benefits are considered non-remunerative payments, and therefore do not trigger payment of any social security contributions.

Termination of the employment contract may be motivated by various reasons.

On the one hand, the employer can terminate the contract at will.

If there is sufficient and just cause for the dismissal, no indemnification shall be due to the employee.

If the termination is due to an unjustified dismissal (without cause), the employee shall be entitled to indemnification equal to one monthly salary per year worked, or a fraction equal to or higher than three months salary. The monthly salary to be paid is the highest normal, ordinary monthly salary accrued by the employee during the last year of employment.

Notwithstanding the above, there are caps on collective bargaining agreements which must be considered when calculating employee indemnification. The cap is equal to three times the average of all salaries covered by the collective bargaining agreement in the respective work category. In case the employee's salary is higher than this cap, the latter shall be taken into account for the calculation of the indemnification. The floor of this indemnification is one month's salary, not taking into consideration the application of the collective bargaining agreement cap.

Even though the legislation that establishes these caps is still in force, the National Supreme Court of Justice declared it unconstitutional in 2004 ("Vizzoti c/ AMSA"). Depending on the amount of the employee's salary, the calculation of the indemnification in case of dismissal without just cause shall be made according to the following alternatives: (i) if the collective bargaining agreement's cap is less than 67% of the salary , the cap amount must be taken as base for the calculation; (ii) if it surpasses 67%, the precedent of the Supreme Court becomes applicable, and the seniority indemnification shall be calculated considering 67% of the employee's salary multiplied by the number of years worked.

The employee shall also be entitled to prior notice of his dismissal without cause equal to one month if he has

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less than five years of seniority is less than five years, or two months if he has five years or more of. In lieu of prior notice, the worker shall be entitled to one or two monthly salaries, depending on the seniority of the employee.

The indemnification due for dismissals without cause shall be higher if the employee is dismissed during the period of protection for marriage or maternity, or is a union representative.

The employment contract may also be terminated by an employee for any serious infringement by the employer (thus entitling the employee to receive indemnification). If the employee terminates employment without cause, the employee shall not be entitled to any indemnification.

Similarly, the employment contract may also be terminated as a result of the mutual agreement of both parties, in which case no indemnification is owed either.

The law also regulates other causes of employment contract termination which result in reduced or eliminated indemnification. These clauses include the following: force majeure, lack of or decrease in workload, death of the employee or of the employer, disability of the employee, and bankruptcy of the employer and retirement of the employee.

C. Collective Labor

Collective labor legislation, which is referenced in the National Constitution and has been codified in specific labor laws, regulates the relationships, rights and duties between collective labor parties: labor unions and employers.

Collective labor law governs the regulation of unions, collective negotiations and strikes.

Each industry sector is entitled a sector-specific union. The union negotiates with the employer or its collective representative the terms of the collective bargaining agreement that will regulate the activity in question.

Unions must be recognized by the Secretariat of Labor. Even though the union represents all workers within the sector it represents, each worker is free to decide whether or not to become a member of the union.

Contributions from union members and employers finance the unions.

Employees of each company may elect one or more union representatives. The number that the workers may elect is determined by the number of employees at the company. These union representatives enjoy special legal protection against dismissal, suspension or amendment of the substantive conditions in the representative's employment contract. The employer may implement this contract for the duration of the term of office and an additional twelve months from the term's end.

Those holding other leadership positions within the union benefit from similar protections.

The final result to be attained by the collective negotiation process is the collective bargaining agreement. As indicated above, unions and individual employers or groups of employers must jointly negotiate the terms of the collective bargaining agreement for their industry sector. These terms apply to all workers included in the represented activity, whether or not the

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workers are members of the union. The terms also apply to all companies represented by the corresponding chamber of employers, regardless of whether they subscribed to the collective bargaining agreement.

Notwithstanding the existence of a bargaining agreement, each company may enter into a special collective bargaining agreement with the corresponding union applying only to that company. This agreement may only establish conditions for the employees that are more favorable than those in the sector-specific collective bargaining agreement.

D. Social Security Law

The scope of the social security regime's application goes far beyond that of labor law, since it extends not only to wage workers but to the independent workforce, the unemployed and people living in extreme poverty.

Contingencies covered include death, disability due to occupational and non-occupational illnesses or accidents, retirement, maternity, family expenses and unemployment.

The social security system is financed primarily by the employees' and employers' mandatory contributions, which range from approximately 40% to 44% of the employee's salary, depending on the size of the company. The following determines the percentage contribution:

Employees: the employer must withhold a maximum of 23% of the employee's salary as social security charges considering an upper cap based on gross salaries up to AR$ 7,800.

Employers: a) companies which perform commercial and service-providing activities invoicing more than AR$ 48M per year must pay the equivalent of 27% of the employee's salary; b) other types of companies must deposit a total equivalent to 23% of the employee's salary.

Occupational hazards are those at work or resulting thereof, either by accident or occupational illness. They can be the cause of temporary or permanent disability, or death.

The Occupational Hazards Act establishes a system of protection against these contingencies, whereby Occupational Hazards Insurers ("ARTs") indemnify injured workers. Employees cannot waive this which coverage.

ARTs are obligated to not only provide insurance for occupational accidents or illnesses, but also to prevent their occurrence by implementing periodic health and safety controls within insured companies.

On December 2008, Law No. 26,425 revoked the semi-private system (in which private pension funds known as "AFJPs" managed retirement plans), thereby establishing that the State will manage the retirement system in the future.

The conditions for retirement are that the employee reach the age of sixty (women) or sixty-five (men) having contributed a minimum of 30 years to the system.

Employees may also obtain special retirement as a result of disability and deceased employee's family members may receive pension payments if the employee supported his or her family.

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The social security system also provides for family benefit payments. These include benefits for children, disabled children, prenatal, school support, maternity, birth, adoption and marriage benefits. They are granted to those employees whose incomes are not higher than AR$ 3,500, except for maternity and disabled children benefits, to which no salary ceilings apply.

XIII. INTELLECTUAL PROPERTY AND DATA PROTECTION

Intellectual property rights in Argentina are protected not only by specific regulation, but also by the National Constitution, which states that: "every author or inventor is the exclusive owner of its work, invention or discovery, for the term provided under the law." Among other agreements, Argentina is a party to the 1966 Paris Convention incorporating the Lisbon Agreement of 1958, and also approved the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") provisions of the General Agreement on Tariffs and Trade.

A. Patents and Utility Models

Patents and utility models are regulated under Law No. 24,481 (the "Patent Law") and amendments thereof, as consolidated by Decree 260/1996. The Decree was passed on March 20, 1996.

1. Subject matter

Patents are defined as inventions that are new and involve inventive activity. Patent rights are granted for 20-year terms, from the date of the patent application's submission to Argentina's National Patent Administration, an agency that operates under the INPI.

Utility models are "any new arrangement or form obtained or incorporated in known tools, work instruments, utensils, devices or other objects that are used for practical work, insofar as they make for better performance of the operations for which they are intended." A certificate of a utility model is valid for a non-renewable period of ten years from the date of application. It is subject to payment of fees provided for by separate regulations.

2. Who may seek a patent

A patent application may be filed by the inventor or his successors and/or representatives and may be requested under the name of an individual or legal entity. Foreign applicants are required to establish a legal domicile in Argentina. The law presumes, subject to any contrary evidence, that the individuals identified as inventors in the patent or utility model application are the actual inventors.

In the event of earlier applications in other countries, the date when the first request was filed is recognized as the priority date, provided that: (i) the application was made within a year of the Argentinean application; (ii) the Argentinean application is not broader than the foreign request (otherwise, the priority will only be partial); and (iii) the country where the first application was made grants reciprocity to Argentina.

Patent revalidation is no longer valid in Argentina, as first decided in re *Unilever*. This position is consistent with the application of both TRIPS and the Patent Law.

3. Patentability

Inventions of products or processes are patentable under the Patent Law if

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they are new or correspond to an inventive activity and have an industrial application. Persons improving a discovery or patentable invention may apply for an "addition patent."

A patent request must be published within 18 months from filing. Interested third parties may object to the application on grounds of lack of novelty, industrial application, or inventive activity.

4. Rights conferred by a patent

A patent owner has the right to prevent unauthorized use of the patent by third parties. For a product patent, the patent owner may prevent third parties from manufacturing, using, offering for sale, selling or importing the corresponding product. For a process patent, the patent owner may prevent third parties from using the process. The patent owner may also prevent third parties from using, offering for sale, selling, or importing products of the patented process.

Both patents and utility models may be licensed or transferred in whole or in part. Transfers must be registered with the National Patent Administration to be effective vis-à-vis third parties. Where silent, license agreements are non-exclusive. The Patent Law permits licensees to exercise the legal rights of the inventor in the event the inventor does not act to do so.

5. Remedies

Criminal Remedies

Certain violations of the Patent Law may be criminally sanctioned, including fraud concerning an inventor's rights that is punishable by a prison term of six months to three years and a fine. The same sanction applies to those who directly or through third parties, in violation of a patent right or utility model, manufacture, market, show, or introduce products in Argentina. The prison term and fine may be increased by up to 33% if the offending party is a: (i) partner, representative, counselor, or employee of an inventor or his/her successor who usurps or discloses a still unpatented invention; (ii) person who learns of the invention by corrupting such persons; or (iii) person who violates the Patent Law's secrecy obligations. Additionally, penalties may be doubled for repeat offenders.

Civil Remedies

In addition to the criminal penalties discussed above, patentees and licensees may take civil action to halt any unlawful patent exploitation and recover compensation for incurred damages under civil law principles. Argentinean law does not allow for punitive damages awards in these cases. The Patent Law also provides for seizure of infringing objects and manufacturing devices. Preliminary injunctive relief is also available.

Preliminary Injunctions

Applications for injunctions, based on Article 50 of the TRIPS Agreement, the Argentine Code of Civil Procedure and Argentine Patent Law, can be made even before bringing the main infringement action to the Court. However, if granted, the infringement action must be filed within 15 days of thereof.

A successful injunction application must convince the court that: (i) the patent would be declared valid if the defendant were to challenge it; (ii) the patentee would suffer irreparable harm absent the injunction; (iii) the balance of hardships tips in favor of the applicant; and (iv) infringement is likely. To the extent the Court does not

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consider the evidence sufficiently persuasive for issuing an injunction, the Patent Law allows for an additional proceeding called the "incidente de explotación." In such a proceeding, the titleholder may require alleged infringers to post a bond or give an adequate guarantee to cover possible damages in case the Court ultimately finds an infringement. Alternatively, the alleged infringer may opt to cease the contested use rather than post a bond while requesting, respectively, that the plaintiff post a similar bond or guarantee.

B. Copyright

Specific copyright regulation is found in Law No. 11,723 of September 26, 1933, complementary regulations passed in Decrees No. 41,233 of March 5, 1934, No. 746 of December 18, 1973 and 124 of February 19, 2009 and amendments thereto (the "Copyright Law"). In addition, Argentina has acceded to numerous copyright treaties.

1. Subject matter

The Copyright Law protects scientific, literary, artistic, and educational works. Such works encompass writings of all nature and scope, including object and source computer programs, compilations of data or other materials, plays, musical compositions, drawings, paintings, sculptures, architecture, models plans and maps, plastics, photographs, and carvings.

Copyright protection covers the expression of ideas, procedures and methods of operation and mathematical concepts, not the ideas, proceedings, methods, or concepts themselves. In order to obtain copyright protection, the work must be expressed in tangible and material form, but only needs to have a minimum level of originality and novelty.

2. Authorship

The rights to a work belong to the author. However, when an employee is hired to create a computer program, the rights belong to the employer, unless otherwise agreed.

For a foreign work to be protected in Argentina, the requirements set forth in applicable international treaties, in particular the Berne Convention (Paris text, 1971) must be met. In the improbable case that the Berne Convention or other copyright treaty do not apply the provisions of the Copyright Law will come into play, and the author will be required to comply with the formalities required for the protection of the rights in the country where the work was published for the first time, provided that he or she is a national of a country where copyrights are recognized.

Under principles of "national treatment," Argentina grants foreign works the same protection as national works. Argentina accords the shorter of the Argentinean term or that of the country where the work was copyrighted. Registration of foreign works in Argentina is not required. However, there are procedural and evidentiary advantages for registering foreign works with the *Dirección Nacional del Derecho de Autor*.

3. Moral rights

In keeping with the Continental Europe legal tradition, authors' rights include two aspects: moral rights and copyrights (commercial rights). Moral rights are those that consist of authorship recognition and the right to protect the creation's integrity and fidelity, which authors continue to

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possess even after they no longer own the commercial rights. Copyrights require authors to be economically compensated for use of their creations.

4. Term of copyright

Copyright Law generally grants authors the rights to their works for life and to their successors for 70 years from January 1st of the year following the author's death. For joint works, this term is counted from January 1st of the year following the death of the last joint author. For collective and photographic works, the term is 50 and 20 years, respectively, from the date of first publication. For filmed material, the term is 50 years from the death of the last joint author.

C. Trademark and Trade Names

Trademarks and trade names are regulated by Law No. 22,362 ("Trademark Law") which provides inter alia that (i) in order to obtain proprietary protection trademarks must be registered before the INPI. Applicants must demonstrate that the trademark will be used to distinguish their product or service; (ii) trade names need not be registered, although its registration is generally advisable for enforcement purposes.

1. Subject matter

Under the Trademark Law, a combination of words, numbers, drawings or any sign with the capacity of distinguishing a product or service, can be registered as a trademark. The following may not be registered as trademarks: 1) names, words or signs that refer to the necessary or common designation of a product or service, or to its nature or qualities; 2) signs that were widely used before the registration; or 3) the form of products, or the natural or singular color of products. Generally, combinations that are identical or similar to others that have already been registered as trademarks may not be registered to distinguish similar products or services.

Trademarks confer exclusivity upon the owner only with respect to the specific product or service for which they have been registered. This is generally known as the "specialty principle", and implies that the same trademark may be used by third parties to designate different products or services to the extent they do not cause confusion.

The Trademark Law does not establish any limitation on the obligation to license or transfer a trademark.

2. Term of trademark

Registration is valid for ten years, and can be renewed indefinitely, as long as the trademark has been used within the preceding five years.

3. Remedies

Trademark infringements, listed in Section 31 of the Trademark Law, include forgery, fraudulent imitation and unauthorized use or sale of trademarks. Penalties for these infringements include prison terms of three months to two years, and fines ranging from AR$ 1M to AR$ 150M.

D. Trade Secrets

1. Subject matter

Trade secrets are regulated under Law No. 24,766 ("TSL") which protects the rights of persons who are legitimately in control of information, allowing them to impede its acquisition by third parties. In order to be protected under the TSL, the information must: (a) be

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secret; (b) have a secret nature must that has commercial value; and (c) have been subject to reasonable measures in order to be kept undisclosed. Non-patentable technical knowledge, such as know how, is an example of information protected as a trade secret.

2. Remedies

Under the TSL, a trade secret owner may request the issuance of cease-and-desist orders, file damage claims with civil courts, or file criminal actions. Criminal sanctions include fines, termination of employment in the case of public officials, and imprisonment of up to two years.

E. Internet Domain Names

NIC (Network Information Center) is a public service -operating under the scope of the Ministry of Foreign Affairs- in charge of ".ar" Argentine Internet domain names.

Registrations shall be made online at www.nic.ar on a first-come first-serve basis. The applicant must complete a form with his or her personal information and declare under oath that the information submitted is accurate, that the application does not violate third party rights, and that the domain name is not being registered for illegal purposes. If any of these statements is false, NIC Argentina may reject applications or revoke registrations. Each applicant is allowed to register up to 200 domain names.

The domain name's term of registration is valid for one year and can be renewed indefinitely.

NIC Argentina will not serve as a mediator or arbitrator in any conflict between registrants, applicants or third parties regarding the use or registration of a domain name. Furthermore, NIC Argentina does not guarantee the legality of a registered domain name. The registrant is the only party liable vis-à-vis third parties with regards to the registration of a domain name.

Transfers of domain names must be performed before a notary public, who must affirm that the parties transferring and acquiring the Internet domain name have sufficient authority to perform those acts. Transfers are valid once the transferor submits a domain name cancellation petition and the transferee submits a registration petition.

F. Industrial Designs and Models

The shape or appearance of an industrial product may be protected if registered pursuant to Decree 6673/63. The protection grants the owner of a model or design the exclusive right to prevent third parties from using or imitating the registered, either industrially or commercially.

Registration may be granted for five years provided there is no prior publication in Argentina or abroad. The term may be renewed for two five-year periods as long as the extension is requested no later than six months prior to the expiration of the five-year term.

Once a design or a model registration has been filed abroad, the same design or model registration must be filed in Argentina within six months of the design application's filing date.

The laws governing the protection of industrial designs sometimes conflict, as copyright law is often applicable as well. In these cases, the designer must choose one law to govern the design's protection.

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G. Data Protection

The 1994 amendment to the National Constitution included the *habeas data* right action, which recognized the right to protection of one's personal data[23]. The habeas data is a legal action which triggers a procedure protecting certain personal constitutional rights (the right to honor, dignity as well as to personal and family privacy) that could be affected by the collection of individuals´ personal data and information.

Local and foreign companies must comply with several provisions specifying how Argentine residents' personal data must be obtained, treated and transferred to third parties.

In November 2000, the Argentine Congress approved Personal Data Protection Law No. 25,326[24]. This Act establishes a range of obligations aimed at protecting personal information recorded in data files, registers, databases or other means of storing data.

According to the aforementioned Law, "personal data" refers to any information involving an identified or identifiable person (the term 'person' encompassing both physical persons and legal entities), i.e., any information which allows people to be identified.

Any breach of this Law entitles the Personal Data Protection Agency (dependent on the Ministry of Justice) to issue warnings, suspensions, or fines. The Agency may also close or cancel the file, register or database concerned. These penalties shall be applied in addition to any liability for damages or criminal penalties arising from the breach.

On June 30, 2003 the European Union issued the "Data Protection Adequacy Finding for Argentina." Argentina became the first Latin American country to receive the EU Data Protection Working Party's approval for its data protection framework. This finding indicates that data transferred between EU member states and Argentina shall not violate the EU Data Protection Directive[25].

The National Database Registry enforces the Act. Any person who owns a database that will give information to third parties, or which will not be limited to personal use, has to register the database in the registry. The cost of this registration currently amounts to up to approximately USD 100, depending on the number of personal registers included in the database. The registration of each database lasts for one year and must be renewed annually.

Finally, according to the registry's provisions, database owners must comply with several security measures in order to avoid liability.

XIV. ENVIRONMENTAL LAW

The national framework for the protection of the environment is briefly described below. It is important to

[23] The third paragraph of Section 43 of the National Constitution states that *"Any person can file this action to obtain access to any data referring to himself and the purpose thereof, registered in public records or data bases, or in private ones intended to supply information; and in case of false data or discriminatory data, to request the suppression, rectification, confidentiality or updating of said data. The secret nature of the source of journalist information shall not be impaired"*

[24] An English version of the Argentine Data Protection Law can be found at the following web address http://www.privacyinternational.org/countries/argentina/ argentine-dpa.html.

[25] A full version of the Decision can be found at http://europa.eu.int/comm/ internal_market/ privacy/ docs/ adequacy/ decision-c2003-1731/ decision¬argentine_en.pdf.

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note, however, that each province and municipality has the power to pass its own rules on the subject. This report does not include those rules.

A. National Constitution

Section 41 of the National Constitution includes the right to a healthy environment. This section is known as the "environmental clause". The clause states that:

"All inhabitants are entitled to the right to a healthy, balanced environment, fit for human development and for productive activities to meet present needs without endangering those corresponding to future generations; and shall have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair as established by the law.

Authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of natural and cultural assets and biological diversity, and the environmental information and education.

The Nation shall issue regulations providing for minimum protection standards, and provinces those necessary to complement them, without the former altering the latter's local jurisdiction.

The introduction in the national territory of current or potentially hazardous wastes and radioactive wastes is forbidden."

The above mentioned Section 41 has to be construed in accordance with Section 124 of the National Constitution, which states that provinces have domain over natural resources existing within their territories.

Section 43 of the National Constitution expressly allows for an affected party, the ombudsman, NGOs and/or consumer groups to file actions of environmental protection (through an action of relief called "Ampere"). The "Ampere" is an expedited legal action created in order to prevent acts or omissions (either committed by public authorities or individuals) which actually or potentially infringe, restrict, alter or threaten, in a manifestly arbitrary or illegal manner, rights and guarantees recognized by the Constitution.

B. International Treaties and Conventions

Argentina is member state of several international treaties concerning the protection of the environment, such as the Río de Janeiro Declaration on Environment and Development, the Vienna Convention on the Protection of the Ozone Layer, the Montreal Protocol on the Depletion of the Ozone Layer, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the Convention on Biological Diversity, the Cartagena Protocol of Biosafety and the Stockholm Convention On Persistent Organic Pollutants. Besides, as a Member State of Mercosur, Argentina has approved certain resolutions in connection with environmental issues (i.e., Mercosur GMC Resolutions 02/01, 34/01 and 30/02).

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C. Minimum Standards for Environmental Protection Laws

In accordance with Section 41 of the National Constitution, seven national laws establishing minimum standards for environmental protection have been enacted: (i) General Environmental Policy – Act 25,657; (ii) Integral Management of Industrial and Services Activities Wastes – Act 25,612; (iii) Water Environmental Management – Act 25,688; (iv) PCBs Elimination and Management – Act 25,670; (v) Free Access to Environmental Information – Act 25,831; (vi) Domestic Wastes Management – Act 25,916; and (vii) Native Forests – Act 26,331.

These laws provide minimum standards that local jurisdictions must meet when enacting legislation.

1. General Environmental Policy - Act 25,675

The General Environmental Policy Act ("GEA") establishes minimum standards for the achievement of an adequate and sustainable protection of the environment, the process of Evaluation Impact Assessment as a requirement for certain productive undertakings, the preservation of biological diversity and the implementation of sustainable development.

The main purposes of the GEA are the promotion of the rational and sustainable use of natural resources and the establishment of procedures and mechanisms to minimize environmental risks, the prevention and mitigation of environmental emergencies and the redress of damages caused by environmental pollution.

2. Integral Management of Industrial and Services Activities Wastes - Act 25,612

This law establishes minimum environmental protection standards for the integral management of wastes produced by industrial or service-providing activities. It sets forth rules of application to generators, transporters and waste treatment facilities.

The regime established by this law is similar to that of Law No. 24,051 on Hazardous Wastes (see paragraph D below). The main difference between these laws relates to the exceptions they allow for waste generator liability. Neither law eliminates this liability where there has been transformation, development, evolution or treatment of the wastes. Under Law No. 24,051 there is no liability in cases of damages caused by an increase of waste hazardousness because of a failing treatment performed in a treatment or a final disposition facility. Law No. 25,612 provides the following wider exceptions to liability: (i) damages caused by the increase in hazardousness of a certain waste as a consequence of an inadequate or failing treatment or handling at any of the stages of the chain of wastes management; or (ii) those cases in which wastes are used as an input for another industrial process.

3. Water Environmental Management - Act 25,688

Law No. 25,688 establishes minimum environmental standards for the preservation, exploitation and rational use of water, and creates interjurisdictional authorities in charge of overseeing natural basins. It defines the different uses of water and the need for obtaining a permit from local authorities to be entitled to use it after receiving approval from the basins authorities.

4. PCBs Elimination and Management - Act 25,670

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Law No. 25,670 requires that the Executive Branch adopt all necessary measures to enforce the prohibition of production and commercialization of PCBs, the elimination of used PCBs and the decontamination or elimination of devices containing PCBs.

Importation and installation of equipment containing PCBs is forbidden. Holders of PCBs or equipment containing them have to register with a special registry and provide the registry with updates of information regarding the PCBs in their possession.

The law presumes, unless there is evidence to the contrary, that used PCBs and all equipment containing them are a "risky good", as provided by section 1113 of the Civil Code (stating that liability is prevented in cases involving risky goods only if the negligence of the injured party or a third party under no obligation of redress is proved).

5. Free Access to Environmental Public Information - Act 25,831

Law No. 25,831 guarantees every person free access to public environmental information possessed by the government – national, provincial and municipal- and public services companies.

6. Domestic Waste Management - Act 25,916

This law provides minimum protection standards for the integral management of domestic wastes originated in households, industrial, commercial and sanitary institutions, insofar as they are not subject to specific regulations. Different steps (generation, initial disposition, recollection, transport, treatment and final disposition) in the treatment of wastes are regulated.

7. Native Forests - Act 26,331 - Decree 91/2009

Law No. 26,331 is aimed at the enrichment, restoration, conservation, utilization and sustainable management of forests and environmental services. It also provides incentives and parameters for the distribution of funds for environmental services provided by native forests.

D. Hazardous Wastes - National Regime

Law No. 24,051 regulates all issues related to the generation, manipulation, transport, treatment and final deposition of hazardous waste: 1) generated or located in places under national jurisdiction; or 2) generated or located in the territory of a province but transported outside that province so that it could affect people or the environment in other provinces. The law also allows for unification of environmental regulations throughout the country when those regulations have an economic impact beyond the province in which they were enacted.

The law defines "hazardous waste" as any waste directly or indirectly capable of causing damage to living beings or polluting the soil, water, atmosphere or environment in general. It also contains special provisions -including administrative, registry and procedural issues- with regard to generators, transporters, treatment and final disposition plants.

When determining liability it is presumed, except in the existence of evidence to the contrary, that every hazardous waste is a "risky good" in the terms of section 1113 of the Civil Code. The law establishes severe civil and criminal sanctions for infringement.

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E. Air Protection

Law No. 20,284 (Preservation of Air Resources Act) is applicable to all sources of air pollution located in national jurisdiction or within the provinces that adhere to the law.

F. Other National Laws

1. Fostering of Soil Preservation - Law No. 22,428

Law No. 22,428, as regulated by Decree 681/81, prescribes that the authorities may declare a "soil preservation district" any area where it may be necessary or convenient to implement programs of soil preservation or recovery. This law is applicable in the territories of the provinces adhering to its regime.

2. Chemical Compounds - Law No. 24,040

Law No. 24,040 deals with chemical compounds as described in annex A of the Montreal Protocol on Substances that Deplete the Ozone Layer (1987). Those compounds are denominated by the law as "controlled substances".

XV. SELECTED REGULATED SECTORS

A. Electricity and Gas

1. Introduction

During the 1990s, the economic and public policies of Argentina underwent significant changes. A central aspect of these changes was the transfer to the private sector, through mechanisms involving sales of corporate stock, concessions or licenses of various activities which had until then been the direct responsibility of the Government.

In the Public Utilities sector, the main changes occurred after State Reform and Monetary Stabilization Law No. 23,696 (the "State Reform Law") was enacted. The State Reform Law authorized the Argentinean Executive to intervene in state-owned companies and further empowered it to privatize or grant concessions for all or part of the services or activities previously under its charge.

In general terms, this transformation process brought about a transition from a monopolistic and centralized planning scheme to one promoting competition. From an institutional point of view, the three main actions the Government took to instill confidence in the transformation included: (i) outlining specific regulatory frameworks that set forth the rules and principles applicable to each sector's specific legal regime, while the remaining details and specifications were to be defined by enforcing authorities through regulations passed in the exercise of statutorily conferred powers or otherwise delegated upon them; (ii) setting up control and regulatory entities that enjoyed relative independence from central political power; and (iii) using contractual mechanisms to regulate core service characteristics, such as the tariff regime, service quality, efficiency, rewards and penalties, guarantees or supply obligations. Moreover, contracts defined specific mechanisms to adjust service conditions and prices to changing circumstances (for instance, extraordinary and regular tariff reviews).

During this transformation, the Government strongly encouraged foreign investment in public utilities. In this regard, it is important to point out that none of the legal and regulatory frameworks established for the different privatization processes that took place included any clause

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forbidding or limiting foreign investment or ownership.

The public utilities' legal and regulatory framework that emerged as a result of the changes mentioned above was significantly altered by the Emergency Law No. 25,561 (the "Emergency Act") of January 6, 2002. The Emergency Act introduced substantial changes in Argentinean legislation, both to the monetary and exchange system as well as the preexisting legal relationships.

The Emergency Act included the following rules governing public utilities: (i) any contractual provisions regarding adjustment in USD or other foreign currencies, adjustment provisions based on foreign price indices, and any other adjustment mechanism under any contracts executed by the Administration, were no longer applicable; (ii) prices and tariffs resulting from any such provisions were established in pesos at a 1:1 rate, disregarding the prevailing rate of exchange of the peso to the dollar (3:1); (iii) the Argentinean Executive was authorized to renegotiate public utility contracts; and (iv) under no circumstances could contractors suspend or alter the fulfillment of their obligations based on the Emergency Act's provisions.

Although many years have passed since emergency was declared, rules enacted as a result of the emergency are still in force. Therefore, tariffs still do not cover the cost of electricity and gas. The foregoing situation left the market in a shortfall situation for several years and encouraged consumption.

The average annual increase in the demand for electricity since the 2001-2002 crisis has been of approximately 5%[26]. At the same time, energy price increases for final users was limited, protecting mainly residential users representing approximately 40% of the total demand[27].

The Argentinean government has been implementing new measures to encourage the adoption of alternative resources ("*Energía Plus*" and "*Gas Plus*") and has allowed certain tariffs increases (summarized below) during 2008. The foregoing, coupled with the 2008 international crisis and related slowdown in industrial growth[28] and decrease in oil prices[29]- anticipates that the situation described above could be reversed over time.

In addition, several laws have also been enacted in order to promote the generation of energy through renewable sources, such as: (i) Law No. 25,019 on wind and solar energy; (ii) Law No 26,093 regarding biofuels; and (iii) Law No 26,190, providing a general framework encompassing several renewable energy sources. In general these laws provide for an advantageous tax and tariff treatment.

In order to meet the goals of Law No. 26,190, state-owned company ENARSA has recently entered into electricity supply agreements for an aggregate amount of 1100 MW generated through renewable resources.

2. The Electricity Sector

While these reforms took place in the early 90's, a substantial transformation of the electric power sector occurred.

[26] According to CAMMESA annual report for 2003, 2004, 2005, 2006 and 2007; and Fundelec 's "gacetilla" of 02-2009
[27] According to CAMMESA report for 2005
[28] www.lanacion.com.ar/nota.asp?nota_id= 1085607
[29] A decrease of the energy consumption was registered at January 2009 (http://www.fundelec.org.ar/gacetillas/2009-02.pdf).

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The main changes brought about included: (i) the introduction and promotion of competition and market mechanisms wherever applicable by clearly separating monopolistic activities, subject to regulation, from those activities that could be subject to market rules; (ii) the creation of transparent conditions that would attract producers and consumers, and generate incentive prices and efficient indicators to increase the electric power supply and wholesale market structure; and (iii) private sector participation in activity-related risks.

Therefore, the wholesale and retail energy markets were clearly differentiated and the industry's structure was vertically divided into the generation, transportation and distribution segments and, where applicable, horizontally split. Furthermore, the economic criteria to which the Wholesale Energy Market ("MEM") pricing should be subject were defined.

In January 1992, Law No. 24,065 providing for the new regulatory framework governing the electricity sector ("Regulatory Framework") was published. Such law prescribes the fundamentals of the sector's economic and organizational regulation.

In order to regulate, control and administer the activities carried out by the energy market participants, two entities were created: (i) the Wholesale Energy Market Administrator ("CAMMESA") whose main functions involve coordinating dispatch operations, determining wholesale prices and administering the economic transactions conducted within the National Interconnection System ("SADI"); and (ii) an autarchic entity created within the Secretariat of Energy, the National Electricity Regulatory Agency (the "ENRE"), the main functions of which are: (a) ensuring compliance with the Regulatory Framework, controlling service supply and fulfillment of obligations undertaken under national jurisdiction concession contracts; (b) defining the rules governing market participants; (c) setting the basis for the calculation of tariffs as prescribed by the conditions of the concession and the Regulatory Framework; and (d) authorizing the construction and expansion of new infrastructure. The ENRE also has original mandatory jurisdiction to hear any disputes arising among the energy market participants, notwithstanding the right to appeal to court. Finally, the Administration, through the Secretariat of Energy, has the power to define the policies and regulate the sector.

Under the new structure, electric power activities were divided into four broad categories: generation, transportation, distribution and demand. Later, traders were included.

Generation has been qualified as an activity of general interest carried out within the framework of a competitive market. Entities that are considered generation companies are electric power plant owners or concessionaires that place their production, either in whole or in part, in the national system of transportation and/or distribution. They can enter into power supply contracts directly with distributors and large users.

The MEM consists of a spot market and a futures market. The spot market is where purchase and sale balances and real values of generation and demand are negotiated. CAMMESA determines, on an hourly basis, the energy price in a specific geographic area, called "the Market", located at the center of the demand charge. The price is, in principle, the result of the economic dispatch that reflects the marginal production cost plus

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associated transportation costs. The futures market is where buyers and sellers freely agree upon prices and conditions.

Since the emergency situation declared in 2002, a number of provisional modifications have severely altered the original mechanism of price determination in the wholesale market. The Government has, however, assumed the commitment of returning to the original rules for price determination as soon as two new combined-cycle gas burning turbines for an accumulated capacity of 1,600 MW start operating.

Any company willing to operate through the wholesale market requires that it be previously authorized by CAMMESA.

For the thermal power generation privatization process, the Government created new corporations to which it transferred electric power plant land and assets of and then made a public offer of the corporations' shares.[30] In the case of hydroelectric plants operated by state-owned HIDRONOR, new companies were incorporated to which a 30-year concession was granted to operate such facilities -for example, El Chocón, Cerros Colorados, Alicurá and Piedra del Águila-, and a public offer was conducted to sell the shares in the new companies. Pursuant to the regulatory framework, hydroelectric generation facilities require that a concession be granted by the State, whereas the operation of thermal power generation plants does not require a specific authorization.

Transportation, as with distribution, was characterized under the Regulatory Framework as a public utility due to its monopolistic nature. Transportation companies are the concessionaires of the electric power transportation service who are also responsible for its transmission and transformation from the generation company's delivery point up to a distributor's or large user's reception point. The Regulatory Framework made transportation companies independent from the other participants by precluding them from buying and/or selling electricity.[31]

In order to carry out the privatization of the transportation business, the Government created corporations to which it transferred and granted, under a concession agreement, the relevant assets. The corporations' controlling stock was then offered to private companies by means of a bidding process. The transportation system was divided into (i) high-voltage energy transportation that links electric power regions and (ii) trunk distribution electric power transportation, which is supplied within each region. Tariffs charged by electricity transportation companies include: (i) a connection charge; (ii) a transport capacity charge; and (iii) a charge that rewards the energy transported. Revenues incoming from system expansions are regulated separately.

In relation to demand, the Regulatory Framework introduced the concept of large users, which are users contracting electric power independently from the generation company and/or distributor to satisfy their own demand.

[30] This has been the case of the privatization process conducted over the thermal power plants operated by SEGBA in the city of Buenos Aires, bringing about the incorporation of the new companies "Central Puerto S.A." and "Central Costanera S.A."

[31] Regulatory Framework, Section 30. Similarly, no generation company, distributor or large user, or controlled/controlling company, may be the owner of or majority shareholder in transportation or controlling company (Regulatory Framework, Section 31).

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Finally, the distribution activity was also described as a public utility given its monopolistic nature. Distributors are the companies responsible for supplying end-users who cannot contract independently within its concession area. The new structure divided old SEGBA into three new companies: EDENOR, EDESUR and EDELAP. These companies covered certain areas such as the cities of Buenos Aires and La Plata and their surroundings, which were under federal jurisdiction pursuant to previous legal arrangements. Similar processes were carried out with national and provincial distribution companies. Most of the provinces adopted the regime, or at least the tariff principles, prescribed by the Regulatory Framework. Most provinces also designed concession agreements similar to those of national companies described below.

These three companies were organized as corporations and were granted the concession of the electric power distribution and trading services within specific areas. As with generation and transportation companies, their privatization process was conducted by means of a national and international public bidding process for the sale of the majority of each corporation's voting stock.

The following were the main features of the concession agreements for the national distribution of electricity: (i) service supply quality standards were defined and failure to meet those standards would entail penalties on the distributors and compensation to affected users; (ii) a 95-year concession agreement for service supply was granted, divided into "management terms": an initial 15-year term and 10-year subsequent terms; at the end of the stated term, the majority stock of the corporation had to be offered for sale again; (iii) the tariffs were fixed on the basis of economic criteria: the system adopted was one of price caps, following pre-determined procedures concerning their calculation and adjustment.

Both transportation and distribution concession agreements: (i) set tariffs in dollars which would be converted to pesos at the time of billing at the prevailing exchange rate; and (ii) provided that tariffs set in dollars would be indexed by variations in the US price index (wholesale or retail or a combination of the two).

As mentioned before, the electricity industry as a whole has been greatly affected by the measures taken since the Emergency Act was passed.

The wholesale market has also been deeply affected because prices were effectively frozen despite rising energy production costs, altering the marginal cost criteria which was previously applied. Natural gas supply shortages have had a great impact as well.[32] Regulations providing that the market must operate as if full supply conditions existed have resulted in power generators being unable to pass fuel surcharges to buyers. Surcharges have been recognized by CAMMESA without sufficient funds to cover them. Thus, the system is now running a large deficit as a result of the impossibility of paying power generator bills. From time to time the Treasury allocates subsidies in order to cancel this deficit. Limits have also been placed on long term energy supply contracts, including energy exports

Argentina has attempted to tackle these problems with the purported intention to return to the marginal cost price and free market-oriented system

[32] The natural gas supply shortage is considered below in the natural gas industry section of this report.

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in place before the emergency regulations were introduced. The Government has entered into an agreement with the primary power generation companies which would cancel the majority of the debt (from 2004-2007) and award shares in new combined cycle thermal general plants. According to this scheme, funds to build the new plants will be provided by 65% of the total amount owed to generators (2004-2006, and 50% 2007), which in turn will be awarded shares in the new projects pro rata. Pursuant to this agreement, the Government has committed to a progressive return to the marginal cost price system. The Government has also committed to paying generators the percentage of debt set aside for financing the new power generation plants.

Conversely, a program called "*Servicio de Energía Plus*" was established, whereby large electricity consumers were obliged to obtain, on their own, coverage of the greatest electrical demand consumed in respect to 2005, apart from promoting the rational use of energy and encouraging its self-generation and co-generation.

This system, created by Resolution of the Secretary of Energy No. 1281/2006, sets forth a difference between "new" energy –which is the one consumed and/or generated in excess of the one consumed in 2005- and "old" energy. The new energy is paid in better under a rate of return system agreed upon by the producer and buyer but approved by the Minister of Infrastructure. A few projects are now under development within the framework of this resolution.

Another effect of the Emergency Act was the suspension of the seasonal adaptations (those which, generally, take place in April and October of each year) and of the revision of tariffs to be regulated every five years (known in the agreements as Tariffs Full Revision, "RTI"). Furthermore, the revision of the agreements binding the companies providing public services and the State was provided (section 9 of Law No. 25,561).

Over time certain tariff increases were gradually implemented and the agreements were renegotiated.

Therefore, after a long and slow process, it was possible to renegotiate the agreements involving distribution and transportation companies.

Each of the companies agreed with the Government to immediately raise tariffs (ranging from 23% to 31%) within the so-called Transition Tariffs Regime while the tariffs were revised. This raise was limited to commercial and industrial users.

On the other hand, and by virtue of the renegotiation, the criteria for the normalization of the Tariffs Full Revision were established. Each agreement provided an implementation date and described how the revision would be verified. However, the dates were postponed, establishing February 2009 as the date for the implementation of the new tariffs from the Tariffs Full Revision[33]. As of the date of this report no RTI has been concluded and enforced.

Notwithstanding these tariff increases, by mid- 2008 the Government granted an approximate 24% tariff increase on the three national distribution companies, which impacted residential users with bimonthly consumptions of over 650 kWh.

[33] According to the resolutions of the Energy Secretariat No. 864/08 (EDESUR), 865/08 (EDENOR), 866/08 (EDELAP), 867/08 (DISTROCUYO), 868/08 (TRANSNOA); 869/08 (TRANSENER); 870/08 (TRANSBA); 871/08 (TRANSCO); 872/08 (TRANSPA).

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In addition, in October 2008 the Government approved a rise in the seasonal price of energy in order to match costs with tariffs or at least reduce subsidies. This rise hit the entire electric market but ended up being applicable only to those users with bimonthly consumptions of over 1000 kWh.

Further increases were established in 2009 through Decree No. 1169/08. However, these were soon suspended by court orders and the Government itself decided to suspend and partially reduce tariffs through Resolutions No. 652/09 and 666/09 of the Energy Secretariat.

3. Natural Gas Distribution and Transportation

In the context of the reforms described above, a substantial transformation of the natural gas sector was also achieved. The industry's transportation and distribution segments were vertically divided, and where applicable, horizontally split. On the other hand, privatization of the State-owned oil and gas company YPF caused a deep impact on the production segment of the industry.

In May 1992, Law No. 24,076 was published, which provided for the new regulatory framework governing the natural gas ("the Gas Act").[34] This act provides guidelines for the sector's distribution and transportation segments. Article two of the Gas Act summarizes its principles.[35]

In order to regulate, control and administer the activities carried out by the energy market participants, an autarchic entity was created within the Secretariat of Energy. This entity is called the National Gas Regulatory Agency (the "ENARGAS") and its main functions are: (a) ensuring compliance with the Regulatory Framework, controlling service supply and fulfillment of obligations undertaken under national jurisdiction licenses; (b) defining safety, quality of service and inter-connection rules; (c) setting the basis for the calculation of tariffs as prescribed by the conditions of the licenses and the Regulatory Framework; and (d) preventing anti-competitive practices within the natural gas sector (those lost tasks were later taken over by the Antitrust Commission or CNDC). The ENARGAS also has original mandatory jurisdiction to hear any disputes arising among industry participants, notwithstanding the fact that there is a right to appeal to the courts. Finally, the Administration, through the Secretariat of Energy, has the power to define the policies and regulate the sector.

Production is governed by provisions in Hydrocarbons Law No. 17,319.[36] This law establishes that hydrocarbon –both liquid and gas– exploration

[34] Law No. 24,076 dated May 20, 1992, published in the Official Gazette on June 12, 1992 (partially vetoed by Decree 885/92). The Gas Act is regulated by the following: Decree 1738/92 (dated September 18, 1992, published in the Official Gazette on September 28, 1992), Decree 2255/92 dated December 2, 1992, published in the Official Gazette on December 7, 1992) and Decree 2731/93 (dated December 29, 1993, published in the Official Gazette on January 7, 1994) .

[35] "*a) Provide adequate protection of users' rights; b) Promote competitiveness of supply and demand of natural gas and attract investment to ensure long-term supply; c) Promote the operation, reliability, equality, free access, non-discrimination and generalized use of natural gas transportation and distribution services and infrastructure; d) Regulate natural gas transportation and distribution activities ensuring fair and reasonable tariff rates; e) Promote efficiency in natural gas transportation, distribution, use and storage; f) Promote rational use of natural gas and ensure environment protection; g) […]*"

[36] Law No. 17,319, dated June 23, 1967, published in the Official Gazette on June 30, 1967.

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requires permits issued by the Federal Government, whereas exploitation rights are granted by concessions. On the other hand the Gas Law foresaw the deregulation of natural gas wellhead prices.

The Gas Law and its regulations established that natural gas exports were generally permitted, provided that they did not affect internal supply and that they were authorized on a case-by-case basis. No authorization is required for natural gas imports.

Transportation, like distribution, was characterized under the Gas Law as a public utility due to its monopolistic nature. Transportation companies are those licensees of the natural gas transportation service who are also responsible for its transmission from the gas field delivery point up to a distributor's or large user's reception point, as the case may be. The Gas Law made transportation companies independent from other participants by precluding them from buying and/or selling natural gas.[37]

In order to carry out the privatization of the transportation business, the Government created corporations to which it transferred and granted, under license agreements, the relevant assets. The corporations' controlling stock was then offered to private companies by means of a bidding process. The transportation system was divided into two companies (TGN and TGS) each of which was assigned to the operation of a main pipeline system (north and south).

In relation to demand, the Gas Law expressly allows users to contract their natural gas supply independently from the distribution companies.

The distribution activity was also described as a public utility given its monopolistic nature. Distributors are the companies responsible for supplying end-users within its license area. The new structure divided the distribution unit of the old state-owned company "Gas del Estado" (GDE) into nine new companies: Metrogas, Gas Natural Ban, Gasnor, Gasnea, Camuzzi Gas Pampeano, Camuzzi Gas del Sur, Litoral Gas, Distribuidora de Gas del Centro and Distribuidora de Gas de Cuyo. Given that the natural distribution activity is under federal jurisdiction, the privatization had effects nationwide. Despite that fact, the Gas Law allows regional or local sub distributors to operate within the main distributor's area.

The nine companies mentioned above were organized as corporations and were granted a license to provide natural gas distribution service within specific areas. As with transportation companies, their privatization process was conducted by means of a national and international public bidding process for the sale of the majority of the voting stock of each corporation.

The main features of the license agreements for the distribution of natural gas were: (i) service supply quality standards were defined and failure to meet those standards would entail penalties upon the distributors and compensation to affected users; (ii) a 35-year license agreement for service supply was granted with the possibility for the licensee to extend this term once for a 10-year period; at the end of the stated term, the majority stock of the corporation had to be offered for sale again; (iii) tariffs were fixed on the basis of economic criteria: the system adopted was one of price caps, following pre-determined

[37] Gas Act, Section 33. Similarly, no production company, distributor or user contracting natural gas from the producer, or controlled/controlling company, may be the owner of or majority shareholder in a transportation or controlling company (Gas Act, Section 34).

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procedures concerning their calculation and adjustment.

According to the system designed by the Gas Law and its regulations, natural gas distribution companies may charge users a tariff consisting of a pre-established, fixed amount along with a variable amount commensurate with the quantity of natural gas consumed. In this system, the distributors pass costs off to users through tariff recalculations based on purchase price variations.

Both transportation and distribution license agreements: (i) set tariffs in U.S. dollars which would be converted to pesos at the time of billing at the prevailing exchange rate; and (ii) provided that tariffs set in dollars would be indexed by variations in the U.S. price index (wholesale or retail or a combination of the two).

The natural gas industry as a whole has been greatly affected by the measures taken since the Emergency Act was passed.

As in the case of other public utilities, natural gas transportation and distribution tariffs have been effectively frozen for more than three years.

The process of renegotiating the agreements within this area has been developing slowly. As of the date of this report only the Gas Natural Ban S.A. and Litoral Gas S.A. agreements have been renegotiated. Both companies were granted a raise of 25% of the distribution tariff but the Integral Tariff Revision is still pending at present.

The natural gas wellhead prices were not covered by the freeze set by the Emergency Act; however, its prize was de facto frozen. Given that prices paid by distributors were frozen as a result of the Emergency Act freeze on tariffs, large consumers who were buying natural gas directly to producers had a strong incentive to get their supply by means of the distribution company in their area.

Through Decree 181/04, the National Executive empowered the Energy Secretariat to develop a plan to normalize wellhead gas price.

The Ministry of Federal Planning then approved, through Resolution No. 208/04, the Agreement for the Implementation of a Scheme to Normalize the Price of Natural Gas at the Point of Entry into the Transportation System, entered into by the country's main natural gas producers. This agreement set a series of staged price increases for large natural gas consumers during 2004 and 2005.

A new agreement was reached and approved by Secretary of Energy Resolution No. 599-2007 due to expiration of the previous agreement and the need to solve supply issues which were registered in the domestic market. This agreement, known as "Agreement with Natural Gas Producers 2007-2011", requires producers to provide daily volumes of gas from each productive basin to different types of consumers each month while the agreement is in force.

The supply established in the agreement was fixed on the basis of domestic market consumption of natural gas in Argentina in 2006 (which was about 120M daily cubic meters).

Each producer's obligation to supply is tied to its average market share for production for the 2001-2004 period.

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These additional volumes will be paid according to the category of consumer to whom the required supply is given..

There is still significant government intervention in gas prices.. These agreements entered into with producers were one the measures taken by the Government to address a severe scarcity of gas.

Decree 180/04 established other measures to address the industry crisis, including:

- the establishment of a trust fund to finance pipeline expansions in order to enhance transportation capacity, to be funded by: a) extra charges to be paid by users of regulated services, such as transportation and distribution; b) special loans from national or international institutions; and c) special contributions made by direct beneficiaries;[38]

- the introduction of regulatory measures that force large consumers to buy their natural gas directly from producers (unbundling);

- the creation of an electronic marketplace for natural gas (MEG) which is aimed at achieving transparency in the natural gas industry dealings, by improving access of every agent to market information and by creating an authority in charge of the coordination of all transactions related to the spot market and the daily publicity of commercial and dispatch information;

- measures aimed at reducing natural gas demand and consumption: (a) Energy Secretariat's Resolution No. 265/04 established preventive steps including the possibility of suspension of natural gas exports that could be used for internal supply, the suspension and revision of resolution No. 131/2001 of the former Energy and Mining Secretariat (that established a procedure for automatic approval for natural gas exportation's request) and the suspension and revision of all pending proceedings before the Energy Secretariat for obtaining such authorizations; (b) the development of a rationalization program by the Undersecretary of Fuels regarding gas exports and the use of the transportation capacity; and (c) Resolution No. 415/04 of the Energy Secretariat, which approved the Rational Use of Energy Program. This program implemented measures both in natural gas and electricity sectors, establishing incentives to induce a reduction in residential consumption;

Apart from these rules, others were established that increased foreign buyers' costs. On one hand, specific transport service charges were implemented to finance expansion works in the natural gas transportation system (Law No. 26,095), and customs rights were also established for the exportation of natural gas produced in Argentina (Decree 145/04, Ministry of Economy and Production resolutions No. 534/06 and 127/08);

- importation of fuels: the Government signed an agreement with Venezuela for the importation of fuel oil for the generation of electricity in thermal generation plants. The use of this imported fuel oil was to be used as a last resort. Also, an agreement with Bolivia was signed for the importation of natural gas into Argentina to fulfill internal demand; and

- Liquified Natural Gas: The Argentinean government promoted, through the newly-formed state-owned company Energía Argentina S.A.

[38] Currently, two pipeline expansions are under way. Once these expansions are concluded they will add an additional transportation capacity of to up 4.7M m3 per day of natural gas.

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("ENARSA"), the purchase of Liquified Natural Gas ("LNG") for its regasification. ENARSA is currently importing LNG through a regasification vessel operating out of the Bahia Blanca Port and is planning to hire another one in 2011 in order to cope with increasing gas demand.

A trust fund was also created in order to provide funds for the importation of gas (Decree 2067/2008), subsidized by consumer surcharges. Such charges were soon challenged by consumers and suspended by courts so the Government decided to reimburse residential consumers of such charges for the June/July period and to reduce its amount by 70% regarding the August/September period.

Finally, and as a measure to solve the issues of the gas industry, the Argentinean government implemented through Secretariat of Energy Resolution No. 24 a program called "Gas Plus," which was similar to the program established for the energy sector.

This program promotes natural gas production in unexploited areas, areas of exploitation with particular geological characteristics (such as "Tight Gas"), areas which have been out of production since 2004, and new fields.

The "new" or "plus" gas is based on the aforementioned 2007-2011 Producers' Agreement and a free market price for this gas has been promised.

To the present date the Secretariat of Energy has already approved several projects under such program, thereby allowing gas producers to benefit from sale prices amounting to approximately US$ 4.5 MMBTU. The foregoing are however not enough to compensate the decline or depletion of other fields which have resulted in an average decline of 3% in gas production since 2006.

B. Mining

1. Mining Legal Framework

According to the National Constitution, the Federal Government is empowered by the provinces to enact basic mining regulation statutes. However, local governments maintain the power to enact procedural regulations and organize their own mining authorities.

The basic legal framework governing mining rights is the Mining Code - enacted on November 25, 1886 by the National Congress through Law No. 1919- and its amendments.

This Code provides that all mineral deposits are State-owned, belonging to the provinces or the Federal Government depending on their location. However, mine exploration and exploitation is assigned to private parties through Government concessions.

Mines constitute separate property from the land in which they are located. Consequently, a concession does not imply the existence of a title over the surface, which can be held by a different person.

Mine Classification

The Code provides for the existence of three kinds of mines.

The first category is formed by the main metal-bearing[39] and non-metal

[39] This category includes: gold, silver, platinum, mercury, copper, iron, lead, tin, zinc, nickel, cobalt, bismuth, manganese, antimony, wolfram, aluminum,

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bearing substances, solid minerals, certain fuels and precious stones.

The second category includes two types. The first one includes the metal-bearing substances not provided for in the first category, saline's, saltpeter's and peat bogs, and aluminous soils, abrasives, ochre's, resins, and alkaline salts, among others. These mines, because of their importance, are preferably granted to the landowner, and in case the owner fails to exercise his exploitation right, to the discoverer. The second type includes metallic sands and precious stones located in river beds, running waters, and slags of abandoned mines. They are intended for the common use (collective exploitation), although they may also be subject to exclusive leases.

Petrous or rocky minerals and materials used for construction and ornamental industries form the third mine category, which belong exclusively to the landowner.

The Code regulates different aspects of each category, particularly the exploration and exploitation of first-category mines.

Exploration Authorization

Any individual or legal entity can request an exclusive exploration authorization for a certain area, and that permission allows him to obtain an exploitation concession in the same area.

The exploration request must include the specific location of the area, aims of the exploration, and petitioners' and landowner's name and address. It also must list the tasks to be completed and an estimation of the prospective investments and the tools and machinery to be used. Additionally, the petitioner must pay an exploration fee for the total surface where exploration is requested, which will be totally or partially refunded in case of denial or partial concession, respectively.

In order to commence any exploration activity both the mining authority's legal permission and the surface owner's consent are required.

Each authorization can consist of up to 20 units -each unit representing 500 hectares- and no person or related group of persons can obtain more than 20 authorizations or 400 units per province.

The explorer is not allowed to commence exploitation of the mine before obtaining a specific legal concession for that purpose.

Different rules govern exploration activities carried out by landowners. They are allowed to perform exploration tasks without prior permission, but this right does not prevail over a third-party's having applied for specific authorization.

Exploitation Concession

Mines can be exploited only by virtue of a legal concession, which can be obtained because a party discovered the mine, or the mine is expired or vacant.

In order to maintain the concession, the concessionaire is required to (i) pay an annual fee; (ii) fulfill a certain investment program; and (iii) not suspend mining operations.

Once the concession is granted, servitudes are granted on the surface and neighboring lands for the purpose of allowing the mining operations and

beryllium, vanadium, cadmium, tantalum, molybdenum, lithium and potassium.

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mineral transportation. These servitudes require the prior payment by the beneficiary of an indemnification to the affected parties.

Contracts

Once a mine concession is granted, the concessionaire is allowed to sell and alienate it as with any other real estate. This includes the possibility of selling and transmitting the rights acquired as a consequence of a discovery.

Mines can also be rented for a period of time up to 20 years, and be subject to usufruct for a maximum period of 40 years.

2. Fiscal Incentives

Mining Code

The Mining Code provides for a five-year exemption from all federal, provincial and municipal taxes on the property, products, machinery, facilities and equipment used for the exploitation. Utility charges and the stamp tax are expressly excluded from this exemption.

Mining Investments – Law No. 24,196

The act provides for 30-year tax stability based on the submission of a feasibility study, encompassing all taxes affecting the above-referenced activities as well as import and export duties.

According to the provisions of the act, enterprises cannot suffer an increase in their total tax burden -independently considered in each local jurisdiction- even if new taxes are created, rate increases approved or exemptions abrogated at the national, provincial or municipal level. However, the stability principle has certain specific exemptions, such as the Value Added Tax.

Fiscal incentives also include the possibility of deducting 100% of the amounts invested in prospecting, exploration, special studies, mineral and metallurgical tests, pilot plants, applied investigation and other tasks performed in order to establish the technical and economic feasibility of the mining projects.

Additionally, the act establishes the possibility of opting between the regular amortization provided for in the income tax act and an accelerated amortization on certain investments made by the beneficiaries.

For investments related to the construction of infrastructure needed for the mine operation –such as electricity supply, roads, water transportation- and housing, health, communication and other services, the amortization system consists of 60% during the first fiscal year and 40% in two equal amounts in the following two years.

In the case of investments for the acquisition of, i.e., machinery, equipment, and vehicles not included in the above paragraph, the accelerated amortization regime consists of 33.33% each year during three years.

Payment of custom duties for the importation of capital goods, special equipment and other goods necessary for the execution of activities covered by the law's provisions is exempt.[40]

Those goods cannot be sold, transmitted or affected to a different activity until the cycle of the activity

[40] However, beneficiaries must pay 1% of the value of the goods as use verification tax (*tasa de comprobación de destino*).

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that caused the importation has concluded or their life utility expires – whichever happens first.

Additionally, VAT applicable to the importation and acquisition of goods and services made by enterprises enrolled in the promotional regime that take part in exploration activities is reimbursed.

C. Forestation

Argentina is the country with the eighth largest surface used for the production of food and raw materials for domestic or foreign markets. It has native forests comprising 29,069,185 hectares and cultivated agricultural areas comprising 174,808,564 hectares.

However, as forestation has been sidelined, arable land has been lost as the surface was reclaimed by the operation. Consequently, Argentina has reached extremes of deforestation estimated at 940,436 hectares and soil erosion compromising a total of 60M hectares.

The use of land for different activities, the growth of planted surface in marginal lands covered with native forests, the growth of the agricultural frontier driven by international markets, global prices, and the lack of a planned and a sustainable management of land leave Argentina's environment vulnerable to negative impacts.

Against this backdrop, Argentina shaped a legal framework regulating different aspects of the forestry sector, with the intention of encouraging investments in planted forests and industrial use applied to the production line of their products.

1. Forest Wealth Defense Law No. 13,723

The first and most and important legislation on this issue was the Forest Wealth Defense Law No. 13,273, enacted in September 1948, as later amended and restated by Decree 710/95.[41.]

This act aims to protect forests while establishing a number of benefits such as tax exemptions to forest lands and profits invested in new plantations or silvicultural improvements. They are called protective forests.

Based on the foregoing, different promotion plans were established through the National Secretariat of Agriculture, Livestock, Fisheries and Food.

2. Law No. 26,331 - Minimum Budget for Environmental Protection of Native Forests

On December 26, 2007, Law No. 26,331 was passed establishing minimum standards for the environmental protection of native forests. The law was passed in response to the rapid conversion of forests to land used for agriculture, housing, logging or roads' construction: and the negative effect of forest's fires.

Law No. 26,331 is aimed at the enrichment, restoration, conservation, utilization and sustainable management of native forests and environmental services

3. The National Forest Development Project

In August 1996 the National Government, in cooperation with the World Bank, created the National Forest Development Project. Its general objective was to improve

[41] Issued on November 13, 1995 and published in the Official Gazette on November 24, 1995

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institutional, technological and legal instruments in order to help forestry attain a prominent position in national and international markets.

Furthermore, the "Project Native Forests and Protected Areas BIRF 4085-AR" is the result of the loan agreement between Argentina and the International Bank for Reconstruction and Development (IBRD).

The preliminary project of the "Act on Promotion of Sustainable Development of Native Forest Resources and Creation of Protective Permanent Forests" was embodied in the forest legislation (Law No. 13,273 and Law No. 24,857 of fiscal stability with amendments made by Law No. 25,080). The final product is called "Preliminary Project of the New National Policy Promoting Sustainable Development of the Native Forests", adopted by the Argentinean Secretariat of Environment and Sustainable Development and included in Project IBRD 4085-A.

It includes different programs of incentive, advocacy, conservation and protection. For example, the Social Forestry Project, the National Action Program to Combat Desertification, the Project Native Forests and Protected Areas, and the Research Applied to Native Forest Resources, among others.

4. Investments in Cultured Forests Act

In this context, on December 1998 the Argentinean Congress approved the Investments in Cultured Forests Law No. 25,080[42], which established a promotion plan for forestry and forestry industry investments, aimed at increasing forested area with native or exotic species for commercial or industrial use. Months later, its regulation was issued through Decree 133/99[43].

This regime regulates integrated industrial forest enterprise activities. These activities include the acquisition of seeds, forest planting, management and research activities, and the industrialization of wood.

For purposes of the law, cultured forests are defined as those cultivated by the planting of native or exotic timber-yielding species ecologically adapted to the specific location, for commercial or industrial purposes in soils which, because of their natural conditions and placement, are capable of forestation or reforestation and, at the date of the law's enactment, were not covered by native arboreal masses or permanent forests.

The act establishes that promoted activities must be developed through the use of environmental protection practices requiring special impact analysis.

In order for the act to be applied in the provincial territories, provinces must pass laws authorizing the act's enforcement.[44]

The act's provisions apply to individuals as well as public and private legal entities. The public and private entities must have an address in Argentina and be previously enrolled in the Registry in the Forestry Office of the Secretariat of Agriculture, Livestock, Fisheries and Food.

5. Fiscal Incentives

[42] Dated December 16, 1998, enacted on January 15, 1999 and published in the Official Gazette on January 19, 1999.

[43] Issued on February 18, 1999 and published in the Official Gazette on March 1, 1999.

[44] All the provinces except Tierra del Fuego have adhered to the national law.

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The plan includes fiscal incentives such as tax stability for 30 or 50 years from the project's approval.

The fiscal stability regime prevents persons or firms with approved projects from suffering an increase in their total tax burden, even if new taxes are created or rate increases approved at the national, provincial or municipal level.

This provision is applicable to all taxes except the Value Added Tax. In connection with the VAT, the law provides for reimbursement of payments made towards the purchase or importation of goods and services for forestry projects.

Fiscal incentives also include the possibility of updating the value of the plantations inventory without tax impact, and the exemption from payment of asset taxes or any other current or future capital tax.

At the same time, the plan allows parties to choose between regular amortization established by the income tax law and accelerated amortization on the investment of capital goods of approved projects. Sixty percent of the equipment, civil works and constructions for the infrastructure can be amortized during the investment year, and the remaining 40% in the following two years. Investments on machinery, equipment and transport vehicles, among other goods purchased for the project, can be amortized in three years at a rate of 33.3% per year.

6. Real Right for Forested Areas Act

Law No. 25,509[45] created a new *in rem* right, similar to the right of usufruct, that treats the rights of an owner separately from those of the person entitled to benefit from the fruits of the property.

According to the provisions of the law, the holder of the "surface rights" acquires a real property right entitling him to use and enjoy the surface of other people's non-movable property, including foresting and executing silviculture activities, owning the plantations or acquiring existent plantations, and being able to constitute guarantees over it.

This is a temporary right that lasts for a period of up to 50 years, after which the right extinguishes.

D. Audiovisual Communication Services

The installation and operation of audiovisual communication services in Argentina is governed by the Audivisual Communication Services Act No. 26,522, and related regulations handed down by the Argentinean audiovisual communication agency, the *Autoridad Federal de Servicios de Comunicación Audiovisual* ("AFSCA"). AFSCA is governed by a seven-member board, to be appointed by the Government, the main political parties and the *Consejo Federal de Comunicación*, an advisory body also created by the Act. Five of the seven directors of the AFSCA have already been appointed.

As of the date of this report the Act had still not been regulated by the Executive. Although enacted on October 10, 2009, is not still fully in effect due to different judicial decisions.

The Act contemplates, *inter alia*, the advent of new technologies, provides for deconcentration of media holdings

[45] Approved on November 14, 2001, enacted on December 11, 2001 and published in the Official Gazette on December 17, 2001.

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and guarantees broader access to media content, the latter by limiting the number of licenses per licensee, allowing access to not-for-profit and public entities and providing for a so-called "social rate".

1. Classification

Broadcasting services are classified under different criteria: (i) according to the person rendering the services, a) public entities (governmental or not) or b) private entities, such as individuals, commercial entities or not-for-profits entities; (ii) according to the nature of the permits, in principle, a) licenses for 10 years, renewable for a 10-year term, or b) authorizations with no indicated term; (iii) according to whether the service is used or not; and (iv) open broadcasting, which, in principle is provided at no cost, and by subscription, which in principle is provided for a fee.

2. Terms and Requisites

Broadcasting licenses are granted for an initial 10-year term (reduced from 15 years under the former Broadcasting Law 22,285) and may be extended for a 10-year term if certain conditions are satisfied. Licenses are issued for specific geographic areas. The Act regulates the conditions enabling an interested party to become either a broadcasting licensee and/or an interest holder in a company holding a broadcasting license. These conditions must be maintained during the full term of the license. The conditions to meet for a public entity shall be established by regulation. Granting of a license requires an analysis of applicant and interest-holder expertise, financial qualifications and category of the services, among other requirements.

Furthermore, certain special requisites have been established for not-for-profit entities, which are granted broadcasting licenses in the same area in which they provide public services.

The participation of foreign capital in licensed companies is limited to 30% of the voting capital, unless the investor is a media company, in which case its participation in licensed companies is prohibited; *provided that* in case a Bilateral Investment Treaty is in force with the country of origin of the investor, the provisions of such Treaty will apply.

No entity may launch a public offer of its shares for more than 15% of its capital stock in case of open-to-air services and 30% of its capital stock in case of subscription services.

3. Maximum Number of Licenses

The possibility of holding multiple licenses has been re-defined.

At a national level, the operation of a satellite service and other type of broadcasting license is prohibited. Likewise, the Act provides for a maximum limit of (i) 10 licenses as regards radios, network television and pay television with use of a radio-electric spectrum (MMDS or UHF), and (ii) 24 cable television licenses in different areas. In no case services may be rendered to more than 35% of the national population or subscribers, as the case may be. At a local level, licensees may hold an AM radio license or FM radio license (with the possibility of having up to two, depending on certain circumstances) plus a license for network television or a license for cable television.

Current licensees who do not satisfy said requirements, who are holders of a greater number of licenses or whose capital structure is different from that

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permitted by the Act must conform to its provisions within one year as from the AFSCA establishes appopriate transition mechanisms. This divestiture rule has been suspended by the Courts.

4. Limitations to License Holders

License holders may not be beneficial holders of channel registries (see "*Registries"* below) other than only one channel, which must be produced by the license holder. It is unclear at this point whether such limitation also extends to affiliates of the license holder, in which case a vertical separation between content and distribution would occur.

5. New Licenses/ Authorizations

Licenses for subscription –including satellite- services are granted by the AFSCA. Services which use the radio-electric spectrum are granted by the Executive, unless the spread area is very small, in which case they are also granted by AFSCA.

6. Transfer

No transfer of license or authorization is permitted. Exceptionally, transfer of interests in broadcasting licenses may be permitted provided that (i) 5 years have elapsed since the granting of the license; (ii) the transfer was necessary for the continuity of the service; and (iii) at least 50% of interest is held by the original holder. Any transfer made without the foregoing authorizations shall cause the termination of the license or authorization *ipso iure* and be void. Therefore, the sale of any company which holds a broadcasting license, and/or any change in the shareholding of a licensed company (i.e. by merger, spin off, divestiture, etc.) is subject to approval by the AFSCA or the Executive, as the case may be.

7. Revocation

Licenses may be revoked by AFSCA on the grounds of (i) material failure by the licensee to comply with regulations; or (ii) revocation on public interest grounds.

8. Nationality

Foreign persons (either natural or corporations) may own up to 30% of the stock and voting interest of local media companies. However, such a limitation: (i) may be reduced in attention to the existence of reciprocity vis-à-vis persons from countries allowing foreign media investments, only in the same percentage that those countries allow foreign investments; and (ii) will not be applied to:

- Media companies that belonged to or were controlled by foreign persons as of July 7, 2003; and

- Transfers of interest reflected in purchase agreements executed on or before July 7, 2003 which were pending the relevant authority's approval.

9. Exploitation

Licensees must exploit broadcasting licenses directly. Assignment of the business to third parties by any means is forbidden. Local rules also forbid: (i) the assignment and re-sale of advertising spaces; (ii) agreements by which licenses are exclusively tied to certain programming producers or other companies; and (iii) the association with or participation of third parties in the exploitation of the broadcasting services. The assignment of the exploitation of broadcasting

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services is sufficient cause for the revocation of the license.

10. Social rates

The Act contemplates that its regulation will provide details on specific mandatory programming packages, to be sold under a reduced, "social" rate.

11. Programming Content

AFSCA has broad regulatory oversight with respect to broadcasting activities, including the cultural, artistic and commercial content of programming. Aspects which fall under its scope are related to the following:

- Language: except for certain exceptions (programs from foreign communities) programs must be in Spanish or translated simultaneously or consecutively into Spanish.

- Content: there is a content threshold whereby minors are protected and violent and adult programming is restricted to certain hourly slots. National production is encouraged and a minimum of locally produced programs is required.

- Advertising: a maximum of up to 14 minutes per hour is allowed in radio transmission, 12 minutes per hour in open-to-air TV and 8 minutes per hour in subscription services. Minutes of advertising may be accumulated in blocks of 4 hours. No advertising may be inserted in channels not included in the basic subscription fees. Advertisements are subject to the same content regulations as any other programming.

- Must-carry: licensees are obliged to carry, inter alia, several channels of the federal and state government, Latin American/Mercosur countries, municipalities and universities.

12. Sanctions

Any and all entities or individuals rendering audiovisual communication services under the Act, content producers and advertising agencies are responsible for any breach of the Act before the AFSCA, and therefore, may be subject to a penalty. Penalties may consist of warnings, fines, advertising bans, termination of the license or registration and disqualification.

Violations of minority age protection and content regulations and recidivism on violations are considered severe violations under the Act. Companies charged with these violations may be penalized with progressive fines and/or revocation of their broadcasting licenses.

13. Fee

Broadcasting licensees and registry programming and advertising agencies must pay a monthly fee to AFSCA amounting to a certain percentage of their gross income.

Gross income includes that which results from: (i) advertising commercialization; (ii) subscription rates; (iii) programming sales; and (iv) any other income derived from the exploitation of audiovisual communication services, as the case may be.

Broadcasting fees depend on the type and geographical location of the service provided:

- TV stations: (i) in the city of Buenos Aires, 5%, and (ii) in the rest of the country, 3.5%, 2.5% or 2%, as the case may be.

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- Radio Stations (AM and FM): ranging from 2.50%to 0.50%.

- Satellite services: 5%.

-Other subscription services: (i) in the city of Buenos Aires, 5%; and (ii) in the rest of the country, 3.5%, 2.5% and 2%, as the case may be.

- Foreign channels, 5%, national channels, 3%.

-Others: from 3% to 1.5%.

14. Registries

The Act creates new registries for: (i) company shareholders; (ii) licenses and authorizations; (iii) signals and programming producers (including foreign producers); and (iv) advertising agencies, these last two being mandatory in order to contract with audiovisual communications service providers.

15. Taxation

Broadcasting activities are generally taxed by VAT, income tax and turnover tax, depending on the province where the service is provided.

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