Country Guide
Argentina

Prepared by

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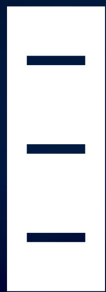

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Doing Business in Argentina

An in-depth analysis and summary for investors

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This booklet is intended to provide readers with basic information on issues of general interest. It do not purport to be comprehensive or to render legal advice. For advice on particular facts and legal issues, the reader should consult legal counsel. The information is as of January, 01, 2020. For further developments, please see our Marval News publication at www.marval.com. References to US dollars are “USD” and references to Argentine pesos are “ARS”.

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Marval O'Farrell Mairal's 2020 Doing Business in Argentina is an essential resource for companies investing in Argentina.

With a complex business landscape, Argentina offers plenty of opportunities but can also present challenges to even the most experienced investor. Our Doing Business guide will help companies navigate the legal and operational complexities of this emerging market. This user-friendly guide explains legal precedents and trends as well as regulatory and policy changes.

Our team of experienced legal professionals have provided in-depth analysis, and clear summaries for investors:

- Foreign investment protection
- Import and export considerations
- Labor and immigration law
- Privacy laws in Argentina
- Protection of intellectual property
- Regional trade agreements
- Tax considerations for businesses
- Updates in legislation and Argentine Civil and Commercial Code

If you are interested in finding out more about investment opportunities in Argentina, our team of legal experts are here to help you.

Sincerely,

Marval O'Farrell Mairal

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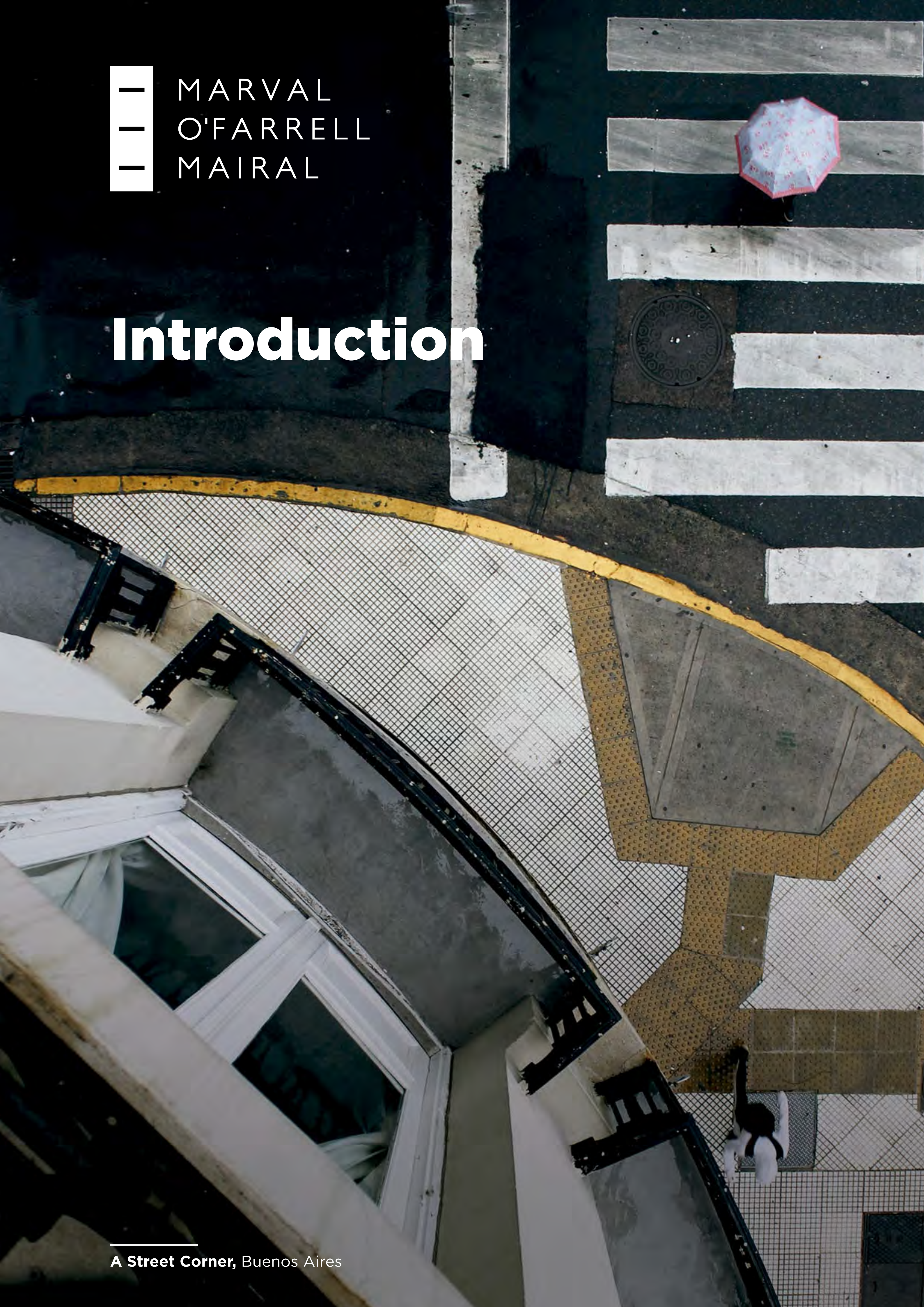

Introduction

A Street Corner, Buenos Aires

1.1 Background: Geography, Demography and Political System

1.1.1 Geography and Demography

The Argentine Republic is sub-divided in of 23 provinces and one federal district, the City of Buenos Aires, the nation's Federal Capital. Located at the south-east tip of South America, Argentina is the eighth-largest country in the world and the second largest in Latin America, covering some 3.8 million square kilometers (approximately 1.5 million square miles). Argentina has an estimated population of over 44 million people, of which approximately 15 million live in the Greater Buenos Aires. The overall population density is about 15 persons per square kilometer.

1.1.2 The Constitutional and Political System

Argentina is organized as a federal republic with a democratic political system, and its Constitution was adopted in 1853. As it stands, the Argentine Constitution divides the Federal Government into three branches: the executive, the legislative and the judiciary.

The executive, which is headed by the president, is the dominant branch at the federal level. The president is elected by direct vote and may serve a maximum of two consecutive four-year terms.

The legislative branch, or Argentine Congress, consists of two houses: the Senate and the House of Representatives. The Argentine Congress has the exclusive power to enact federal laws, including for international and inter-provincial trade, immigration and citizenship, patents and trademarks. The Argentine Constitution also entitles the Argentine Congress to enact codes, which are applicable nationwide concerning civil, commercial, criminal, labor, mining and social security matters.

Each province has its own constitution, holds elections for its governor and legislators, and appoints judges to its provincial courts.

1.2 The Argentine Civil and Commercial Code

On October 1, 2014, the Argentine Congress enacted Law No. 26,994 to approve the Argentine Civil and Commercial Code (the "CCCN" after its acronym in Spanish), which has been in force since August 1, 2015.

The CCCN introduced many reforms that have had, are having and will continue to have an impact on different economic activities:

i) In property law, which is particularly relevant in the business world, the code regulates the abusive exercise of rights, including the abuse of dominant position. A special point is made of good faith as a necessary condition for the valid invocation of rights.

ii) Priority is given to general and community interest through the protection of collective incidence rights and public order rules within the framework of contracts and consumer rights, as well as through the restrictive interpretation of pre-formulated standard contracts.

iii) General rules applicable to all private legal entities regulate the responsibility of individuals with management duties. Law No. 26,994 amended the Argentine Companies Law, eliminating the distinction between civil and commercial companies.

iv) Contractual negotiations (e.g., preliminary contracts, letters of intent) are regulated, as well as the responsibilities derived from them. This has established a distinction between private instruments, which are signed by the parties, and "particular" instruments that are not signed but that in certain circumstances may be used as evidence.

v) The contracts that are regulated include agency, concession, franchise and supply contracts, factoring and association contracts (sharing agreements, collaboration groups, joint ventures and cooperation consortia), and several forms of bank contracts, assignment of a contractual position and arbitration.

vi) With regards to civil liability, the distinction between contractual and tort liability was eliminated, and stress is placed not only on damage compensation but also on its prevention. For this purpose, judges are empowered to issue preventive measures and dissuasive penalties when rights of collective incidence are at stake.

vii) Regarding in rem rights, the CCCN incorporates categories such as surface rights, indigenous community property and real estate developments (e.g., country clubs, gated communities, private cemeteries). Also, updated regulations on condominium ownership.

viii) The CCCN introduced changes to the statute of limitations regime establishing as a general rule a shorter period (i.e., five years).

ix) The CCCN incorporates general and special rules on private international law, which deal not only with the law applicable in situations related to several legal systems but also with the determination of international jurisdiction for the settlement of conflicts.

The CCCN includes a broad scope of amendments, to the legal system based on the constitutional amendment of 1994. The reform responds, in some cases, to modern conceptions of the law, introducing changes of criteria particularly within the contractual field. On other issues, it includes approaches given by case law or those that have already been applied in practice even though they do not have an existing special rule that foresaw them. Their scope and interpretation in the practice of law is being evaluated as it is applied.

1.3 Information for the Foreign Investor

1.3.1 Argentine Foreign Investment Regime

Foreign investments in Argentina are regulated by a framework of international treaties and Argentine laws and regulations that cover a variety of aspects of foreign investment such as choice of law and jurisdiction, the legal treatment of foreign investors, monetary policies and foreign exchange. Argentina has entered into 60 bilateral treaties with different countries.

In general, foreign investors who want to invest in Argentina, either by starting up new businesses or acquiring existing businesses or companies, do not require prior government approval except in regulated industries or under general rules such as antitrust regulations. However, if a foreign company's investment will imply holding equity in an Argentine company, the foreign company must register in the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and must comply with certain periodic reporting requirements. Paragraph 2.1.2 below provides a detailed description of these registration and reporting requirements, and paragraph 6.5 below offers a description of the antitrust regulations.

Foreign investments are governed by Argentine Foreign Investments Law No. 21,382, which was enacted in 1976. Since that time, it has been amended considerably to liberalize the rules applicable to foreign investment.

The Argentine Constitution states, as a general principle, that foreigners investing in economic activities in Argentina have the same status and the same rights that the law grants to local investors. They are entitled to select any legal entity and to have free access to domestic and international financing.

2011, which imposes limits on the ownership or possession of rural land (i.e., any land outside the urban grid) by foreign individuals or legal entities. For example, no more than 15% of the total amount of rural land in Argentina may be owned or possessed by foreign individuals or legal entities. Under no circumstance may foreign individuals or legal entities of the same nationality hold or possess more than 30% of the 15% total. These percentages are also applicable at the provincial and municipal levels where the lands in question are located.

Amendments were made to the Rural Lands Law through Decree No. 820/2016, allowing ownership by the same foreign owner to exceed one thousand hectares (1,000 Ha), which had previously been restricted. The modification also eliminated restrictions on owning land in "Industrial Zones," "Industrial Areas" or "Industrial Parks." Thus, that land is no longer taken into account when determining the hectares of rural land owned by a foreign person or legal entity.

One of the only foreign investment sectors still restricted in Argentina is broadcasting, but the Investment Protection Treaty with the United States has been construed as repealing these restrictions, at least for U.S. investors. Law No. 25,750, enacted in 2003, also eases the restriction by allowing up to 30% foreign ownership of Argentine broadcasting companies. A lack of precedent, however, has made its application uncertain.

Another restriction on foreigners is that they must obtain prior government approval to purchase land in border and security areas, or to hold a controlling stake in a company owning such land. Additional restrictions on foreign ownership of farmland were introduced by Law No. 26,737 (the "Rural Lands Law"), enacted in December 2011, which imposes limits on the ownership or possession of rural land (i.e., any land outside the urban grid) by foreign individuals or legal entities. For example, no more than 15% of the total amount of rural land in Argentina may be owned or possessed by foreign individuals or legal entities. Under no circumstance may foreign individuals or legal entities of the same nationality hold or possess more than 30% of the 15% total. These percentages are also applicable at the provincial and municipal levels where the lands in question are located.

In cases of properties adjacent to certain bodies of water, the prohibition is absolute.

Amendments were made to the Rural Lands Law through Decree No. 820/2016, allowing ownership by the same foreign owner to exceed one thousand hectares (1,000 Ha), which had previously been restricted. The modification also eliminated restrictions on owning land in "Industrial Zones," "Industrial Areas" or "Industrial Parks." Thus, that land is no longer considered when determining the hectares of rural land owned by a foreign person or legal entity.

1.3.2 Foreign Exchange Controls

In September 2019, the foreign exchange controls were reinstated.

Here is a brief summary of the main rules and regulations of the foreign exchange regime in force as of January 2020:

- **Export of goods:** collections for export of goods must be transferred and sold for pesos through an Argentine-licensed financial entity or foreign exchange business (collectively, the "FX Market"), within a maximum term ranging from 15 to 365 calendar days, depending on the goods exported and the relation with the importer, and cannot be sold later than 5 business days as of the date of collection. The terms should be counted as of the date of shipment (*cumplido de embarque*) of the export destination granted by Argentine Customs.
- **Export of services:** proceeds thereof must be transferred and sold for pesos in FX Market within a term no longer than 5 business days as of the date of collection locally or abroad, or their clearance in foreign accounts.
- **Access to FX Market by Argentine residents:** (i) entities require prior approval of the Argentine Central Bank (the "BCRA" after its acronym in Spanish) to acquire foreign currency to invest in assets abroad or to grant any kind of guarantees related to the instrumentation of derivative transaction; (ii) t individuals can freely exchange the equivalent of USD 200 on a monthly basis, this restriction does not apply for transfers of foreign currency by a natural person from their local foreign-currency denominated accounts to their own accounts abroad. For any amount in excess, the natural person requires the prior approval of the BCRA. This restriction does not include payments by clients of financings in foreign currency granted by local financial institutions, including payments for purchases made with credit cards in foreign currency and local collection agents' funds corresponding to services rendered by non-Argentine residents to Argentine residents and institutions for expenses paid to foreign institutions for usual operations.
- **Access to FX Market by non-Argentine residents:** access to the FX Market by non-resident customers requires the prior approval of the BCRA.
- **Financial indebtedness with non-Argentine residents:** local residents borrowing money from non-Argentine residents are required to transfer and sell for pesos borrowed funds as of 09/01/19, unless each and all of the following conditions are met:

(i) That the funds are brought to Argentina and credited in local foreign currency accounts in local fi-

nancial institutions held by the client;

(ii) That the funds are brought to Argentina within the term established by the BCRA regulations;

(iii) That the foreign currency proceeds are allocated simultaneously to transactions for which applicable foreign exchange regulations allow access to the FX Market against local currency, within the limits provided for each concept involved;

(iv) That, if the repatriation corresponds to new foreign financial indebtedness and its purpose were the prepayment of local foreign currency denominated debt, the new foreign financial indebtedness must have a longer than average duration than prepaid local debt; and

(v) That the use of this mechanism is tax neutral.

- **Prior approval of the BCRA for prepayment will be required with more than 3 business days prior to maturity except if the following conditions are met:**

(i) That the prepayment is made simultaneously with the settlement of funds of new financial debt disbursed as of such date;

(ii) That the average duration of the new debt is longer than the average remaining duration of the prepaid debt;

(iii) That the due date of the first payment of principal of the new debt does not fall before the first future due date for the payment of principal of the prepaid debt; and

(iv) That the amount of the first payment of principal of the new debt is not more than the first payment of principal due under the prepaid debt.

- **Profits and dividends:** before payment or transfer of profits or dividends abroad, prior approval of the BCRA is required.
- **Import of goods and services:** prior approval of the BCRA is required for: (i) pre-payment and (ii) payment of services with related parties, except in the case of credit card issuers for transfers made for tourism and trips. The definition of related parties corresponds to the criterion used in the regulations regarding large exposures to credit risk.
- **Local financings in foreign currency:** financings granted by local financial institutions in foreign currency to clients from the private non-financial sector must be sold for pesos in the FX Market upon disbursement.
- Blue-chip swap transactions are restricted to Argentine resident natural persons.

On December 28, 2017, through Communique "A" 6401, applicable as of December 31, 2017, the BCRA implemented a unified reporting regime. The reporting requirements under the information regime vary depending upon the final balance or amount of foreign assets and liabilities:

- For individuals or entities for whom the balance or the acquisition or sale of external assets and liabilities at the end of a given calendar year are equal to or exceed the equivalent of USD 50 million, a quarterly declaration prior to the end of each quarter and an annual declaration, which allows the correction, affirmation or update of quarterly declarations, must be filed.
- For individuals or entities for whom the balance or the acquisition or sale of external assets and liabilities at the end of a given calendar year are equal to or greater than USD 10 million, but less than USD 50 million, only an annual declaration is required.
- For individuals or entities for whom the balance or the acquisition or sale of external assets and liabilities at the end of a given calendar year are equal to or greater than USD 1 million but less than USD 10 million, only a simplified annual declaration is required.

There is no reporting obligation for individuals or entities for whom the balance or the acquisition or sale of foreign assets and liabilities at the end of a given calendar year are less than USD 1 million.

1.3.3 Investment Protection and Promotion

In 1989, Argentina implemented the 1958 treaty with the United States regarding the Overseas Private Investment Corporation (OPIC), a U.S. government agency that provides insurance to U.S. investments in developing countries. In 1990, Argentina became a member of the World Bank Group's Multilateral Investment Guaranty Agency (MIGA), which provides insurance coverage for foreign investments made by persons or legal entities established in member countries.

These agencies insure investments against political risks, such as the availability and the right to transfer foreign currency, expropriations or similar events, breach of contract by the government of the host country, war and civil unrest, among other risks. Both agencies require prior approval on the legality of the investment and insurance coverage by the government of the host country.

Argentina has signed treaties for the promotion and protection of foreign investments with the United States, Germany, Switzerland, Italy, the United Kingdom, Belgium, Canada, France, Chile, Spain, Sweden, Austria, Holland, Denmark, Australia, New Zealand, China, Russia and Mexico.

1.3.4 Membership of Regional Economic Trade Groups and International Organizations

Argentina's relationship with the rest of Latin America is based upon cooperation in trade and investment issues, most notably with the creation of the Mercosur Common Market (Mercosur), which is currently made up of Argentina, Bolivia, Brazil, Paraguay, Uruguay and Venezuela. Mercosur calls for a gradual elimination of all tariff barriers between its members and a common external tariff with the rest of the world.

Globally, Argentina is a charter member of the United Nations, a founding member of the Organization of American States, and a member of the World Trade Organization.

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Argentine Investment Vehicles

Floralis Genérica, Buenos Aires

Law No. 26,994 amended and unified the Argentine civil and commercial codes (now, the "Argentine Civil and Commercial Code, or the "CCCN" after its acronym in Spanish), and amended Argentine Companies Law No. 19,550 (*Ley de Sociedades Comerciales*), among other laws. The amended Argentine Companies Law applies to all types of companies and has been renamed the General Companies Law (the "LGS" after its acronym in Spanish).

2.1 Principal Types of Business Entities

Foreign companies may conduct business in Argentina on a permanent basis, or they can appoint a local commercial representative, set up a branch, incorporate a local corporate entity (subsidiary), or acquire shares in an existing Argentine company.

The main investment vehicles used by non-resident individuals and foreign companies are the following: branch, corporation (*Sociedad Anónima*) and limited liability company (*Sociedad de Responsabilidad Limitada*).

It is worth noting that the LGS recognizes single-shareholder corporations (*Sociedades Anónimas Unipersonales*, or SAU) as a corporate entity that can be adopted. In addition, the LGS has introduced a new type of legal entity called the simplified corporation (*Sociedad por Acciones Simplificada*, or "SAS").

The basic characteristics of the branch, corporation, single-shareholder corporation, simplified corporation and limited liability company, as per Argentine law and the regulations of the Public Registry of Commerce of the City of Buenos Aires (the "IGJ" after its acronym in Spanish), are provided below.

2.1.1 Branch of a Foreign Entity

Any company duly organized and existing in accordance with the laws of its country of origin can set up a branch in Argentina. However, the registration of foreign offshore companies in the City of Buenos Aires has been restricted by the IGJ. In principle, it is not necessary to allocate capital to the Argentine branch.

The branch must keep separate accounting records in Argentina and file annual financial statements with the IGJ. The branch must also comply with several obligations related to the external supervision of the IGJ.

2.1.2 Corporation (*Sociedad Anónima*, or "SA")

Capital and Shareholders – At least two shareholders, which can be legal entities or individuals, are required to set up an SA. The minimum capital required is ARS 100,000 (approximately USD 1,600 at the exchange rate at the time of writing). While the share capital must be fully subscribed at the time of incorporation, only 25% need be paid in on such shares, with the balance to be paid within two years thereafter. Contributions in kind of real estate, equipment or other non-monetary assets must be made in full at the time of subscription.

Capital is divided into shares that must be in registered form and denominated in Argentine currency. Except for specific cases provided by the law, there are no nationality or residency requirements. Foreign individuals, whether residents in Argentina or not, and foreign companies may hold up to 100% of the capital. Shares must be of equal par value and have equal rights within the same class. However, different classes of shares may be created. Transfers of shares are generally unrestricted, but restrictions may be included in the by-laws if they do not effectively prevent the transfer of shares.

Management and Representation – A board of directors elected at a shareholder meeting manages the SA. Directors, and even the president of the company, may be foreigners. Even so the majority of the board members must be Argentine residents.

Shareholder Meetings – A shareholder meeting must be held at least once a year to consider the annual financial statement, the allocation of the results of the fiscal year, and the appointment of directors and statutory supervisors.

Shareholder resolutions must be recorded in an appropriate minute book.

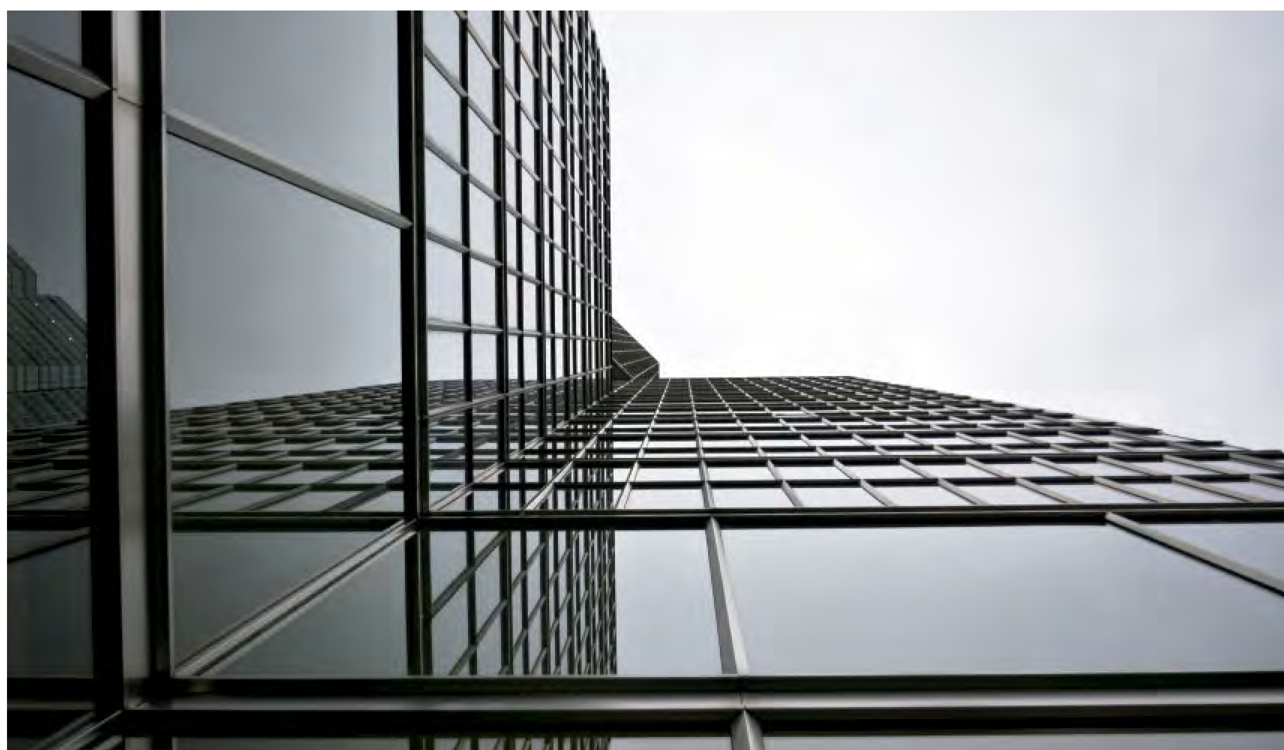
SAs must keep a share registry book as well as books on attendance at shareholder meetings and the minutes of boardroom and shareholder meetings. Accounting books must be kept, and, if applicable, a supervisory committee minutes' book.

Supervision – Argentine companies are subject to the external supervision of the IGJ and the internal supervision of controllers or supervisors (*síndicos / comisión fiscalizadora*) appointed by the shareholders, if required by law.

Shareholder Liability – Shareholders who have fully paid up their subscribed shares are in general not liable for the company's obligations beyond their capital contributions. Shareholders who are partly paid up in their shares are required to pay any outstanding balance within a maximum of two years from the date of subscription.

Any shareholder with a conflict of interest with those of the company has a duty to abstain from voting on any matter relating to that conflict. The shareholder who fails to comply with this provision will be responsible for any damages resulting from a final resolution of the matter in conflict if their vote contributed to the majority vote necessary to adopt the resolution. Shareholders who vote in favor of a resolution that is subsequently declared null are jointly and severally liable for damages caused as a result of such resolution.

Liability of Directors and Managers - All directors and managers of a SA are subject to a standard of loyalty and diligence. Noncompliance with these standards results in unlimited joint and several liability.



2.1.3 Single-Shareholder Corporations (*Sociedades Anónimas Unipersonales*, or "SAU")

Incorporation Requirements – Since a SAU is a type of SA, it has the same incorporation requirements of a SA, with these additional requirements:

(i) SAUs can only be incorporated as corporations (*sociedades anónimas*).

(ii) SAUs cannot be shareholder in another SAU.

(iii) SAUs' share capital must be fully subscribed and paid up upon incorporation.

(iv) A SAU's corporate name may include the name of one or more individuals, and must include the expression *"sociedad anónima unipersonal,"* or its acronym "S.A.U."

Capital – If the capital is increased, the capital contribution must be fully subscribed and paid in simultaneously upon approval by the shareholders.

Supervision – The CCCN establishes that SAUs are subject to permanent government supervision, as provided in Section 299 of the LGS. In this regard, SAUs must:

(i) appoint a board of directors composed of at least three members;

(ii) appoint a statutory supervisory committee of at least three members that always has an odd number of members; and

(iii) comply with the filings required of companies subject to permanent government supervision by the Public Registry of Commerce of the jurisdiction where the SAU has its domicile registered. This includes information on the holding of ordinary and extraordinary shareholder meetings, and financial statements.

As SAUs are subject to permanent government supervision, they are a costly type of corporate entity, so they are typically not a convenient option for small-scale businesses. However, SAUs may be a convenient alternative for foreign investors to set up a subsidiary in Argentina, given that only one shareholder is required (previously, the Argentine Companies Law required investors to register two foreign companies with the IGJ to set up a subsidiary in Argentina because a minimum of two shareholders was required).

2.1.4 Simplified Corporations (*Sociedades por Acciones Simplificadas*, or "SAS")

These types of corporations were introduced as part of a law passed in 2017 to promote entrepreneurial activities in Argentina, with the purpose of reducing incorporation costs and procedures for new enterprises.

Incorporation – Registration must be completed within 24 hours from the next business day after the filing as long as the filings are made electronically with a standard form. The incorporation or any amendment may be made by public deed, a duly legalized private instrument, or electronically with a digital signature. This procedure includes digital notices for IGJ observations. In the event that the draft by-laws approved by the IGJ are not adopted the registration may take at least twenty (20) days.

However, IGJ has recently passed a resolution that suspended on-line registrations of SAS for 180 days starting March 11, 2020. During this period, the registration of the SAS may only be made by filing physical documents.

A SAS can obtain a tax ID within 24 hours of being filed with the Argentine Tax Authority (the "AFIP" after its acronym in Spanish) and with no need for providing evidence of domicile at the beginning of the filing.

Board of Directors – The simplified corporation must have at least one effective and one alternate director, in the case of no statutory supervisors. These posts may be appointed for certain or uncertain terms. With regards to the effective directors, at least one must have residency in Argentina. This new type of entity also allows meetings of the board of directors to be held electronically and outside the company's premises.

Shareholders – A SAS may have one or more corporate entities or individuals as shareholders. If the shareholder is a limited liability entity, it is subject to the integration of the shares. Shareholder meetings may be held electronically and outside the company's premises.

Corporate Purpose – A SAS's corporate purpose may be multiple, but the activities must be related.

Limitations – A SAS cannot incorporate or participate in another SAS. A SAS cannot be controlled by

or related by more than 30% of its corporate capital with a company included in the terms of 299 ACL (essentially large corporations).

Initial Capital – At first, corporate capital cannot be less than two times the minimum salary. Capital is divided into shares with singular or plural vote. Capital integration is based on the terms and conditions of the by-laws.

Capital Increase – Up to 50% of the registered capital does not need to be registered. The issuance of shares with different prime are allowed.

Notices regarding incorporation and capital variation – Notices must include detailed information regarding the contribution and ownership of each of the shareholders.

Contributions – The value of in-kind contributions may be unanimously set by the shareholders, or by market value as a default. Irrevocable contributions may remain as such for 24 months.

Shares Assignment – The assignment of shares must be done according to the by-laws and may require shareholder approval. If it is not determined in the by-laws, any assignment must be notified to the company and registered within the Shares Registry Book in order to be effective against third parties. Limitations may be included in the by-laws forbidding the assignment of shares for a period of up to 10 years.

Transformation – All companies incorporated pursuant to the LGS may be transformed into a SAS.

2.1.5 Limited Liability Companies (*Sociedad de Responsabilidad Limitada*, or "SRL")

Capital and Partners – An SRL may be set up by a minimum of two and a maximum of 50 partners, who may be individuals or corporate entities. Foreign individuals or corporate entities can be admitted as partners of SRLs provided that they are empowered to participate in such companies by the laws of their jurisdiction of incorporation.

The capital must be fully subscribed upon incorporation, denominated in Argentine currency and divided into partnership quotas. A quarter (25%) of the capital must be paid up by the partners at the time the SRL is formed, and any balance must be paid up within two years thereafter.

When quotas are issued for contributions in non-monetary assets, they must be fully paid in. Partnership quotas must be of equal par value and entitle the holder to one vote each. Partners in an SRL are entitled to preemptive rights with respect to new issues of quotas.

Management and Representation – The partners may appoint one or more managers, who may be partners, employees or third parties. The managers represent the company, either individually or jointly, as determined in the by-laws.

Partners' Meetings – SRL by-laws contain the rules for adopting resolutions. Unless the by-laws state otherwise, resolutions may be passed in writing without the need for holding a meeting. The exception is for those companies with a capital of ARS 50 million or more, that must hold meetings to review the annual financial statements. If one partner holds the majority vote, the vote of another partner will be necessary for the partners´ meeting to be considered valid.

Supervision – The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs unless their capital amounts to ARS 50 million or more, in which case one or more statutory supervisors or a supervisory committee must be appointed. When statutory supervisors or a supervisory committee are appointed, the rules for SAs generally apply.

The Liability of Partners and Managers – In general and with few exceptions, similar rules for the liability of partners and managers apply to SRLs and SAs. However, when there is more than one manager, liability will depend on the provisions of the by-laws.

2.1.6 Mergers and Spin-offs

2.1.6.1 Mergers

The LGS regulates mergers. This law provides for two types of mergers:

(i) mergers by consolidation, in which two or more companies transfer their assets and liabilities to set up a new company (the successor company), which issues shares to the shareholders of the merged companies, which are then dissolved; and

(ii) mergers by absorption, where one or more companies (the absorbed companies) transfer their assets and liabilities to an existing company (the surviving company), which issues shares to the shareholders of the absorbed companies, which are then dissolved.

Creditors' Rights – To protect creditors' rights, a notice of merger must be published in the Official Gazette in each company's jurisdiction and in a newspaper with nationwide circulation.

Right of Withdrawal – Whenever the shareholders of a company approve a merger in which their company is not the surviving company, any shareholder who voted against the resolution or did not attend the meeting at which the resolution was approved may withdraw from the company and receive the value of the relevant shares, determined on the basis of the company's most recent audited balance sheet (i.e., the merger balance sheet).

Registration – The law requires that the merger be recorded in the Public Registry of Commerce. If the merger, the capital increase or modification of the charter or by-laws of the absorbing company are not registered, the merger will have no legal effect vis-a-vis third parties.

Taxation – To encourage these kinds of business reorganizations, Argentine tax law provides, in principle, that mergers do not give rise to any tax liability, provided that certain conditions are satisfied.

2.1.6.2 Spin-offs

Argentine law defines a spin-off as an action by which a company:

i) separates off part of its assets and liabilities from its existing assets and liabilities and either:

(a) creates (together with another company) a new company to which these assets or liabilities are transferred, or

(b) merges such assets and liabilities into one or more existing companies (in the latter case the rules applicable to mergers will apply);

ii) separates off part of its assets and liabilities from its existing assets and liabilities and creates one or more companies to which these assets and liabilities are transferred; or

iii) creates new companies into which all its assets and liabilities are transferred.

Creditors' Rights – Creditors in spin-offs are entitled to the rights similar to those applicable to mergers. Details of the spin-off must be published in the Official Gazette of the jurisdiction of the spinning-off company and in a newspaper with nationwide circulation.

Right of Withdrawal – Similar rules to those applicable to mergers apply.

Registration – Once the periods provided for the rights of withdrawal, objection by creditors and application for judicial liens have elapsed and there are no claims pending, the by-laws of the new company and the amendment to the by-laws of the spinning-off company will be executed and registered at the Public Registry of Commerce, and the spin-off will be effective with respect to third parties.

2.2 Other Forms of Investment Entities

2.2.1 Partnerships

Partnerships are entities in which the participants' liability is unlimited. In Argentina, partnerships generally take the form of a *Sociedad Colectiva*. All the partners are jointly and severally liable for the obligations of the partnership once its assets have been exhausted. No minimum capital is required, and the liquidation of the partnership requires unanimous consent.

2.2.2 Joint Ventures

Specific regulations on joint ventures, previously included in the Argentine Companies Law, have been removed and are now included in Chapter 16 of the CCCN.

The joint venture vehicle most commonly used in Argentina is the *Unión Transitoria de Empresas* ("UTE" after its acronym in Spanish).

The UTE is a specific type of joint venture governed by the CCCN. A non-resident corporation may be a member of an Argentine UTE if it complies with the same kind of registration proceedings with the Public Registry of Commerce as those applicable to a branch of a foreign company.

All UTEs and their representatives must be registered with the Public Registry of Commerce of the jurisdiction of incorporation (i.e., the City of Buenos Aires or one of the provinces).

UTEs are generally not treated as independent legal entities, although they are considered as such for certain purposes including labor law, social security contributions and value-added and turnover taxes. For asset, income and other taxes, UTEs are considered transparent entities, and such taxes are payable by the members.

Joint ventures other than UTEs are also permitted under general corporate law.

2.2.3 Trusts

The concept of a trust was first introduced into Argentine law in January 1995 by Law No. 24,441. Such concept has been instrumental in permitting innovative financial techniques to be brought into Argentine real estate financing. Since this law was passed, a number of major projects have been started using the trust as part of the legal structure. This allows the intervening partners, whether developers, financiers or constructors, to isolate the property, the subject matter of the transaction, from other assets and creditors. This guarantees that the project is not jeopardized by extraneous factors. Trusts also permit the securitization of the funds flowing from projects, giving access to capital markets for financing.

The CCCN introduced amendments to Law No. 24,441. The specific regulations on trust agreements previously included in Law No. 24,441 have been amended and included in Chapter 30 of the CCCN.

The CCCN establishes that a trust is created on the transfer of certain assets by one person (the "settlor") to another person (the "receiver"). The receiver exercises the rights of ownership of such assets for the benefit of a person designated in the relevant agreement as the beneficiary and agrees to transfer the assets, on the expiration of the trust term or the fulfillment of a certain condition, to the residual beneficiary.

The CCCN allows the receiver to be a beneficiary of the trust, though in such a case the receiver must avoid any conflict of interest and must give priority to the interest of the remaining parties of the trust agreement. However, the CCCN does not allow the receiver to be the residual beneficiary.

The CCCN also allows creating a trust over a group of assets (e.g., *universalidad de bienes* or goodwill).

Based on Argentine law, assets held in a trust comprise a separate estate from the estates of the receiver, settlor, beneficiary and residual beneficiary. This means they will not be affected by any individual or joint actions brought by the receiver's or settlor's creditors, except in the case of fraud by the settlor.

The law contains specific regulations regarding financial trusts. The receiver of a financial trust may only be a financial entity, or a corporation specifically authorized by the Argentine Securities and Exchange Commission (the "CNV" after its acronym in Spanish) to act as financial receiver.

2.3 Certain Regulated Activities

2.3.1 Financial Institutions

Financial Institutions´ Law No. 21,526 (the "FIL") of February 14, 1977, as amended, governs banking activities in Argentina. It provides that the Argentine Central Bank (the "BCRA" after its acronym in Spanish) is responsible for the regulation, inspection and supervision of financial institutions. The BCRA has the discretionary authority to authorize the operation, merger and transfer of the banking business of financial institutions, as well as the establishment of branches and representative offices of foreign banks. Local branches of foreign financial institutions receive the same treatment as their domestic counterparts. A bank must notify the BCRA of any proposals for transfers of interests, and the BCRA has power to deny or approve such proposals.

The BCRA also has power to establish the scope of permitted and prohibited activities and to put limits on credit, indebtedness, minimum capital, reserves, net worth requirements and the concentration of risks. Many of the requirements of the BCRA mirror the risk-weighted criteria provided in the Basel Committee guidelines.

The FIL 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, as well as credit associations, which are commonly known as *Cajas* and have limited functions and a smaller impact on the market.

Under the FIL, all financial institutions may, without restriction, receive term deposits, make temporary investments in assets of high liquidity, and act as dealers or agents in transactions within the scope of their permitted business activities.

Commercial banks may engage in all the financial and banking activities not prohibited by FIL and BCRA regulations. Commercial banks are the only financial institutions that may accept sight deposits and offer checking accounts.

Other financial institutions are limited to specifically authorized transactions.

In March 2012, Law No. 26,739 amended the Charter of the BCRA and Convertibility Law No. 23,928. In general, the amendments primarily affected the functions and powers of the BCRA as the regulatory and supervisory authority of the financial system and expanded the Argentine Government's access to financing from the BCRA.

2.3.2 Insurance Companies

According to Law No. 12,988, as amended, persons, goods and any other insurable interest of Argentine jurisdiction may only be insured by insurers licensed by the Argentine Superintendence of Insurance (the "SSN" after its acronym in Spanish).

Insurance activities are governed by Insurance Companies Law No. 20,091, as amended. This law states that insurance activity may only be offered by one of the following types of entities with the prior license of the SSN:

(i) corporations (i.e., SAs), Single-Shareholder Corporations (according to the amended LGS, named "SAU", after its acronym in Spanish) (please see Section 2.1), cooperatives and mutual entities which are incorporated and domiciled in Argentina;

(ii) branches or agencies of foreign insurance companies, cooperatives and mutual entities, with local capital; and

(iii) state-owned entities, whether national, provincial or municipal.

To obtain an insurance license from the SSN, a company must:

(i) have insurance activity as its exclusive corporate purpose;

(ii) comply with minimum capital requirements;

(iii) be registered in the Public Registry;

(iv) appoint an "independent director";

(v) submit a corporate governance report with information on how they are to comply with corporate governance principles and recommendations, which mainly refer to (i) the composition of the board of directors and its experience in the insurance activity; (ii) liabilities and sanctions applicable to the board of directors; (iii) business and investment plans; (iv) risk management policies; (v) board of directors and managers' compensation policies; (vi) guidelines for the attention of the insured; (vii) anti-money laundering and financing of terrorism policies.

(vi) present a feasibility report and business plan.

The SSN will evaluate if the proposed initiative contributes to the development of a productive project, the development of the national economy, the creation of employment and the reinvestment of revenues. The SSN will also consider the characteristics of the project, the local market and the background and responsibilities of the applicants, as well as their experience in the insurance business.

No prior approval or authorization is required to transfer the shares of an insurance company, although a subsequent filing is required with a description of the transaction, along with other documents and information regarding the purchaser, its shareholders, members of its board of directors, management, officers and statutory supervisors.

Additionally, within 30 days from the date when the transaction takes place, the insurer must report its "Ultimate Beneficial Owner" to the SSN. "Ultimate beneficial owners" are the individuals that have at least twenty per cent (20%) of the capital or voting rights over a legal entity or that, by any other means, exercise the final direct or indirect control over a legal entity. If there is no individual "Final Beneficial Owner" to report, the identity of the president or of the highest authority of the company must be reported.

The lines of insurance admitted by the SSN are life, personal accidents, health, retirement, burial, property and casualty, motor, liability, employer's liability, environmental damage, surety and public transportation insurance, among others.

Insurance companies must keep accounting books and records; produce financial, accounting and other reports on a regular basis; notify or require approval for certain corporate actions (e.g., shareholder meetings, by-law amendments); maintain the required level of reserves and capital; and report suspicious activities under anti-money laundering regulations, etc.

Insurance companies may market insurance policies themselves or through agents or independent brokers.

2.3.3 Reinsurance Companies

Reinsurance activities are governed by Insurance Companies Law No. 20,091, as amended, and by SSN Resolution No. 38,708/2014, as amended.

Reinsurance and retrocessions may be placed both with local reinsurers and with admitted reinsurers.

Local reinsurers may be Argentine corporations (i.e., SAs), SAU, cooperatives and mutual entities, as well as branches of foreign companies with capital in Argentina. To obtain a local reinsurer license from the SSN, among other requirements, a company must:

(i) have reinsurance activity as its exclusive corporate purpose;

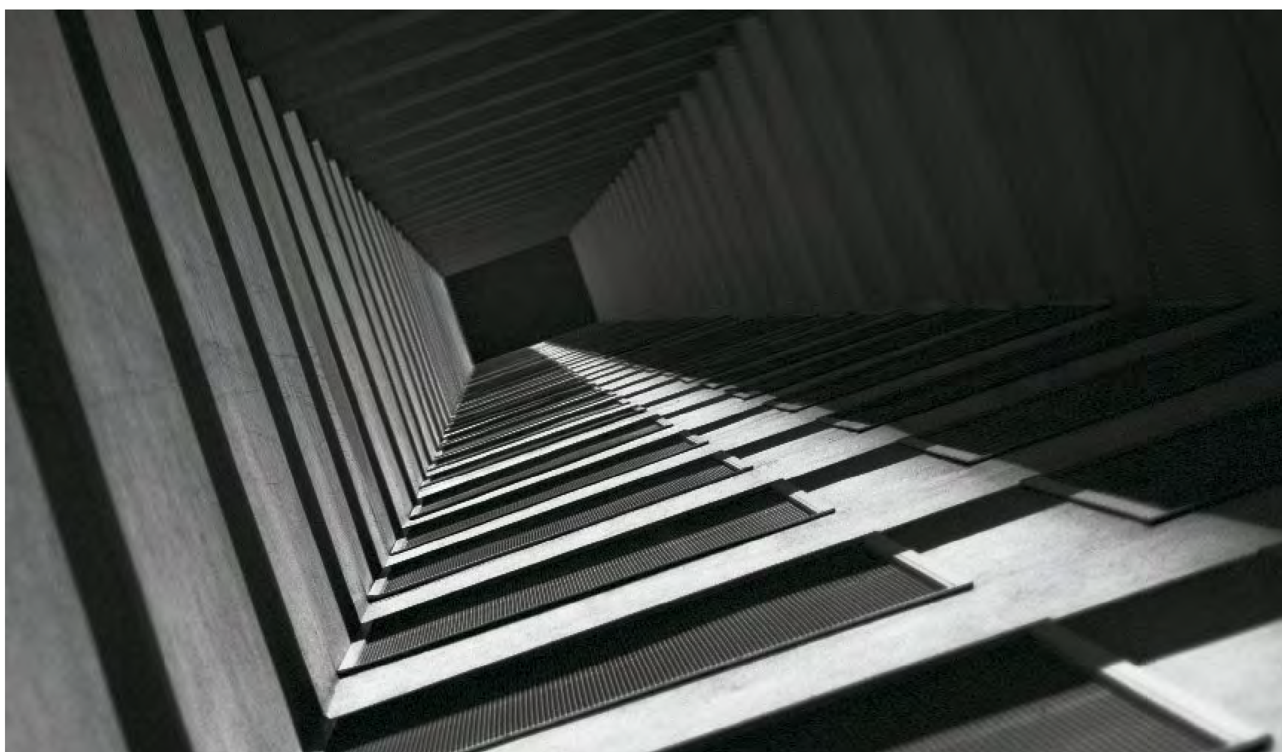
(ii) comply with minimum capital requirements;

(iii) be registered in the Public Registry;

(iv) appoint an "independent director"; and

(v) file a report similar to that required from a new insurer (see 2.3.2.e) above).

"Admitted reinsurers" are foreign reinsurers that act from their home offices and that must be registered with the SSN.



IInsurers may place reinsurance, in all lines, with admitted reinsurers up to a maximum of 75% of premium ceded under the contract. The other 25% must be mandatorily placed with local reinsurers. However, facultative reinsurance contracts for individual and catastrophe risks for sums equal or higher than USD 35 million may be fully placed with admitted reinsurers.

The transfer of shares of local reinsurers, like that of insurers, does not require a previous SSN authorization, but a subsequent filing. Local reinsurers must also comply with a number of ongoing requirements, similar to those required from insurers.

2.4 Capital Market Regulations

On May 5, 2017, the Productive Financing Law was published in the Official Bulletin. This law introduces significant reforms to Capital Markets Law No. 26,831, published on December 27, 2012, (as amended, the "Securities Law") with the objective of achieving a modern financial regulatory framework that contributes to the development of the country's economy. The Securities Law addresses several aspects relating to market transparency, such as participation in public offerings, disclosure of relevant information, tender offers, insider trading and market manipulation. It also contains regulations on the supervisory capacity of the CNV, summary investigations and administrative sanctions.

2.4.1 Public Offerings

There are 5 relevant stock exchanges in the country, of which the Bolsas y Mercados Argentinos SA (the "BYMA" after its acronym in Spanish), which started to operate in May 2017 as a replacement for the Mercado de Valores de Buenos Aires SA (the "MERVAL" after its acronym in Spanish), is the most important. The BYMA was created from the split of the MERVAL and the capital contribution of Bolsa de Comercio de Buenos Aires. The creation of this new entity, in the framework of the Securities Law, is intended to unify the Argentine stock market to improve its efficiency.

According to the Securities Law, stock exchanges must be integrated and use the same electronic platform.

Securities traded in the City of Buenos Aires are traded in the BYMA and the over-the-counter market (Mercado Abierto Electrónico, or the "MAE" after its acronym in Spanish). Individuals or brokerage firms organized as sole-purpose corporations (sociedades de bolsa), including subsidiaries of commercial banks, registered and authorized by the CNV, are allowed to carry out transactions with securities in the stock exchanges.

The Securities Law expressly provides that stock exchanges and securities markets can no longer impose being a shareholder of the market as a requirement for membership. It also establishes that securities markets must be organized as public companies, excluding other types of corporations or civil associations.

The CNV may now directly authorize, revoke, regulate and supervise the securities markets and their participants. The CNV must determine the requirements that the markets and their participants need in order to be authorized as such.

The Securities Law includes at least three types of licenses for the public offering of securities: the broker-dealer license, the underwriter license, and the clearing member license. Also, the Securities Law expressly states that the CNV has the power to create new types of licenses and modify the existing ones, including the power to cancel types of licenses that were created by the Securities Law.

CNV regulations establish procedures for registering debt securities, asset-backed securities, pooled or investment funds, direct investment funds and money market funds. There are lesser requirements for the listing of the securities of small and medium-sized enterprises.

Corporate debt securities offered to the public may be rated by one or two rating agencies, but the rating is no longer a mandatory requirement to offer these types of securities in the market. Issuers may also request that the rating agencies rate their equity securities. Rating agencies must be approved and authorized by the CNV, which has the power to authorize, supervise, monitor, act as disciplinary authority and regulate participation in the capital markets.

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2.4.3 Security Placement

For the primary placement of securities, the CNV issued General Resolution No. 662 in May 2016. It allows two options for placement. One option is through the formation of a book, known as book building. The other is through an auction or public tender. The book-building method consists of creating a curve based on the interest expressed by possible purchasers, making it possible to determine the price at which the securities are offered. In the auction- or public-tender method, issuers place the highest bid at which they are willing to sell the securities. The price fluctuates based on the number of investors willing to purchase the securities at that price and the amount of securities that they are willing to acquire.

The placement procedure must ensure full transparency and must be made public in all its terms prior to its beginning. The placement is done through a computer network system, which allows all negotiation agents (*Agentes de Negociación*) and settlement agents (*Agentes de Liquidación y Compensación*) registered with the CNV and the members of the markets to place offers during the offering period in the auction or public tender, or indications of interest in the book-building system. The offering period is a minimum of three business days prior to the date of the auction or public tender, or the subscription or allocation in the case of book-building.

The prospectus or prospectus supplement and the subscription notice must indicate the placing system to be used. It must also include the parameters for determining the price and guidelines for the allocation of the securities.

2.4.4 Trust Regulations

For financial trust regulations, Law No. 27,440 introduced several modifications to the existing regime. Among other relevant modifications, the maximum term of thirty (30) years for trusts has been excluded for financial trusts with public offer of listed securities whose purpose is the securitization of mortgage loans. Also, Law No. 27,440 finally clarifies that the obligation to register the financial trust must be considered to fulfilled with the authorization of public offering of the CNV.

2.4.4.1 Small and Medium-sized Enterprises

The CNV also has regulated the creation of global programs of trust securities by small and medium-sized enterprises ("SMEs") through several regulations. The purpose of these trusts is to finance entities qualified as SMEs. It is important to bear in mind that the trustees of financial trusts may only be financial entities or corporations specifically authorized by the CNV to act as financial trustees.

CNV General Resolution No. 696 of June 15, 2017, establishes a special regime for the issuance of securities by SMEs, called CNV SME Guaranteed Notes. These have the advantages of regular notes but have an easier registration process and fewer disclosure requirements for SMEs than for larger companies. It also simplifies access for SMEs to the public offering regime.

CNV General Resolution No. 743 updated the definition of an SME, in terms of access to capital markets, as a company duly organized and existing under the laws of Argentina whose total annual income in pesos does not exceed the following values: (i) agribusiness sector: ARS 431,450,000; (ii) industrial and mining sector: ARS 1,441,090,000; (iii) commerce sector: ARS 1,700,590,000; (iv) services sector: ARS 481,570,000; and (v) construction sector: ARS 630,790,000.

2.4.4.2 Access to Capital

Support for Entrepreneurial Activity Law No. 27,349 was published on April 12, 2017, in the Official Gazette. To provide access to capital for an enterprise, the Support for Entrepreneurial Activity Law creates a Fiduciary Fund for Entrepreneurial Capital Development and regulates Crowdfunding Systems.

The Fiduciary Fund for Entrepreneurial Capital Development (FONDCE), constituted as an administrative and financial trust, is governed and enforced by the Secretary of Entrepreneurial and Small and Medium-sized Enterprises of the Ministry of Production. The FONDCE's purpose is to provide financing for entrepreneurs and entrepreneurial capital institutions. Financed by a variety of public and private resources, the funds will be used for granting loans, non-reimbursable contributions and capital contributions to support entrepreneurial projects and entrepreneurial capital institutions.

The Support for Entrepreneurial Activity Law also regulates crowdfunding, which had not been regulated previously in Argentina. The goal is to promote financing for entrepreneurs and entrepreneurial capital institutions through capital markets. The system allows entrepreneurs to file a crowdfunding project over an online crowdfunding platform to obtain funds from investors to finance the project, provided that the relevant legal requirements are fulfilled. The crowdfunding platform must be a corporation (*sociedad anónima*) duly authorized by the CNV. This regulation excludes from the crowdfunding system projects with charity purposes, donations, direct sales of goods and services, and loans that cannot be converted into corporate shares, or simplified corporate shares.

2.4.5 Insider Trading

The Securities Law and several CNV regulations aim to prevent the misappropriation of non-public information and guarantee fair trading in the securities market. The CNV must be informed of any relevant facts that may have a significant impact on the purchase and sale of securities. The CNV imposes a duty on certain people to keep secret all information that has not been publicly disclosed and which may have an impact on the price of securities. The use of privileged information for the benefit of the persons who have access to such information or for the benefit of third parties is forbidden.

The CNV also requires that controlling shareholders, directors, managers, statutory auditors, members of supervisory committees and any other person, who by reason of their position, activity or relationship obtains information, take all the measures necessary to prevent subordinates or third parties from gaining access to such privileged information. These people must inform the CNV of any fact or circumstance that may be deemed a violation of the duty of confidentiality or a violation of the prohibition against the use of privileged information.

The issuer or the shareholders are entitled to recovery proceedings in connection with the use of privileged information by insiders ("short-swing profits").

The Argentine Criminal Code was amended by Law No. 26,733 on December 28, 2011, to incorporate criminal sanctions for insider trading. The amendments include criminal penalties on directors, members

of supervisory bodies, shareholders, shareholder representatives and whomever that, by means of their job, profession or position at an issuing company, provides or uses privileged information to which it had access as a result of its activities for the negotiation, pricing, purchase, sale or liquidation of securities. Penalties are increased, for example, when the privileged information is used or provided on a regular basis.

These activities are subject to the following sanctions that may be imposed by the CNV: (a) a written warning, which may be accompanied by the publication of the relevant resolution in the Official Gazette and two national newspapers; (b) fines of up to ARS 20 million, which may be increased up to five times the benefit obtained by the insider if it were higher; (c) disqualification for up to five years to act as directors, administrators, members of the supervisory board, accountants or external auditors, or managers of any entity subject to the supervision of the CNV; (d) cancellation of up to two years of the authorization to make a public offering; and (e) prohibition to make a public offering of securities or to participate in any capacity in a public offering.

2.5 Anti-Money Laundering Regulations

Decree No. 360/2016 states that the fight against money laundering, terrorism financing and the proliferation of weapons of mass destruction is a strategic priority of the Argentine state and administration. Money laundering is defined as the exchange, transfer, administration, sale, pledge and assimilation or the incorporation through any other fraudulent means of assets proceeding from a criminal act into the market, provided that the possible consequence is to grant the assets the appearance of having been obtained by legitimate means, and given that the value of such assets is more than ARS 300,000. If the value of the laundered assets is less than ARS 300,000, the person responsible is subject to a lower criminal sanction. The treatment of these criminal offences is handled on a risk-based analysis that may include the confiscation and return of assets.

Money laundering constitutes a specific criminal offence, included in Title XIII of the Criminal Code and in Law No. 25,246. This crime against economic and financial order commonly involves currency, but it might also include any other material or legal asset, movable or immovable property. An important distinction to be made with most other criminal offences is under Section 23 of Law No. 25,246, which states that legal entities and individuals can be charged with money laundering.

2.5.1 Applicable Rules

The applicable rules on money laundering are included in Argentine legislation and several international commitments that the country has undertaken. This includes the recommendations made by the Financial Action Task Force (the "FATF"), of which Argentina is one of the 37 member countries. It is also a member of the *Grupo de Acción Financiera de Latinoamérica* (the "GAFILAT" after its acronym in Spanish) along with 16 Latin American countries. Local legislation should be examined carefully as different legal requirements may be requested depending on the specific activity of the involved party (e.g., financial entities do not have the same treatment as insurance entities).

Local enforcement has two stages: the actions of the security forces and criminal proceedings, and a previous confidential, preventive and repressive stage. The authority in charge of controlling and sanctioning in the first instance is the Financial Information Unit (the "Unit", or the "UIF" after its acronym in Spanish), which was created by Law No. 25,246 and its modifications. This special agency is responsible for issuing regulations for implementing the law and monitoring compliance, with special emphasis on preventing money laundering related to corruption, tax evasion, terrorism, extortive kidnapping, drug trafficking, weapon smuggling, child prostitution and pornography, and racially or politically motivated crimes. Decree No. 360/2016 created a National Program to combat money laundering and terrorism financing. It establishes that this organization has the competence to create and lead operations in federal, provincial and municipal jurisdictions. The Unit is managed by a board with representatives of the BCRA, the CNV, the AFIP, the Secretary of Drug Prevention, the national coordinator (created under section 4 of Decree No. 360/2016) and three experts from each relevant field.

The UIF collaborates with the Egmont Group, an international agency comprised of several entities of this nature to prevent and fight money-laundering crimes. In 2012-2013, Argentina assumed the presidency of the group of experts for the control of money laundering (the "LAVEX" after its acronym in Spanish) that operates under the scope of the Inter-American Drug Abuse Control Commission of the American States (the "CICAD/OEA" after its acronym in Spanish).

2.5.2 Reporting and Know Your Customer Requirements

Law No. 25,246 and Law No. 26,683 established the obligation to file periodical reports to the UIF. Certain types of companies and individuals, including financial entities, broker-dealers, credit card companies, insurance companies, public notaries, and certain government registries and agencies (e.g., notary public, registry of commerce, trustee, real estate and corporations registries, the BCRA, the CNV) are required to report suspicious transactions to the Unit and implement "Know Your Customer" (KYC) procedures. Specifically, those companies must:

(i) Obtain from their customers documentation that proves their identity, domicile and other basic data determined by implementing regulations issued by the Unit; bodies such as the Public Registry of Commerce of the City of Buenos Aires require the determination of the final beneficiaries of legal entities and their shareholders;

(ii) Store customer data in the manner and for the periods determined by implementing regulations issued by the Unit;

(iii) Report to the Unit any suspicious transaction, or any transaction that, based on the experience of the reporting company and considering customary practices for that type of transaction, is unusual, lacks economic or legal justification, or involves unjustified complexity; and

(iv) Abstain from disclosing to the customer or third parties any information concerning suspicious transactions or any pending proceedings.

The resolutions issued by the Unit contain specific guidelines on how to identify suspicious transactions, including a list of examples of the kinds of transactions deemed suspicious. Such resolutions also regulate the timing and procedure for filing reports about suspicious activities. Companies and individuals cannot waive the reporting obligations imposed by the anti-money laundering regulations on grounds of legal or contractual confidentiality commitments.

Resolution No. 30-E/2017, issued by the Unit, is applicable to financial entities and currency exchange offices. It lays down the guidelines for anti-money laundering compliance and risk management. According to this rule, entities must define policies and procedures to identify, evaluate and reduce anti-money laundering risks, according to their specific commercial activity and the risks that they face in every segment of their business. Special reports and internal handbooks must be prepared, and a compliance officer and a prevention committee must be appointed.

KYC procedures must lead to the categorization of clients. On the basis of this categorization, due diligence procedures must be run.

The resolution also provides rules on electronic transfers and cash deposits.

Resolution 4/2017, issued by the UIF and applicable to financial entities and broker dealers, sets a special KYC regime for foreign and local investors seeking to open special investment accounts. The main goal of this resolution is to simplify the process while preventing money laundering and terrorism funding.

Resolution 156/2018, issued by the UIF, aims to adjust Anti-Money Laundering and Terrorism Financing ("AML/TF") regulations applicable to capital markets participants to the Financial Action Task Force Recommendations as of 2012, shifting such regulations to a risk-based approach. Among the many changes introduced by the resolution, the following are the most important:

(i) Reporting entities must establish a schedule for the digitalization of all client files existing before the issuance of the Resolution, in accordance with the risk level of each client.

(ii) External independent reviews may be filed within a term of 120 days as of the term for the filing of the Risk Self-evaluation.

(iii) The affidavit stating compliance with applicable AML/TF provisions required from clients who were also reporting entities (established by Unit Resolution No. 70/2011) was replaced by a requirement to show proof of registration of the client before the Unit.

(iv) External independent reviews have been authorized to access information necessary to evaluate the appropriate function of the alert and monitoring system and unusual and suspicious transaction analysis procedures, as long as the information provided excludes any content which may allow the identification of the persons involved in the transactions.

(v) When reporting entities carry out more than one activity regulated by the Unit, the risks for each activity must be evaluated and, if convenient, a single report may be prepared in a consolidated document, which must clearly reflect the particular characteristics of each activity alongside its risks and mitigation in terms of AML/TF.

(vi) The definition of the economic group has been modified to include only entities of the same economic and/or corporate organization as long as they are reporting entities under article 20 of Law No. 25,246, as amended.

(vii) The capacity to share client files within economic groups has been incorporated, subject to express approval from the client in such sense, alongside the client's capacity to request the Reporting Entity to share all information and documentation in their file with the reporting entities listed in subsections 1, 2, 4, 5, 8, 9, 10, 11, 13, 16, 20 and 22 of article 20 of Law No. 25,246, as amended.

(viii) Operational matters regarding continued due diligence may be delegated, so long as it does not include the determination of the timing of this analysis and the control of the result thereof, the monitoring and analysis of transactional alerts and the management of suspicious transaction reports and related documentation.

(ix) The identity of clients must be verified using documents, data or reliable information from independent sources, while safekeeping the corresponding evidence of the process and the copy of the document which serves as proof of identity provided by the individual.

MARVAL O'FARRELL MAIRAL

Tax Considerations

Talampaya National Park, La Rioja

3.1 Income Tax

Income Tax Law ("ITL") establishes a federal tax on the worldwide net income obtained by Argentine resident individuals, legal entities incorporated in Argentina and Argentine branches of foreign entities.

Income tax is payable on the net income made in a given fiscal year. As a general rule, for Argentine legal entities or Argentine branches of foreign entities, income is allocated to the fiscal year in which it accrues (despite certain exceptions to the general rule). Losses incurred during any fiscal year may be carried forward and off set against taxable income obtained during the following five fiscal years.

Article 23 of the ITL provides that net income is determined by deducting from gross income any expenses "incurred to obtain, maintain and preserve the taxable income". Regarding expenses incurred abroad, article 91 of the ITL establishes that such expenses should be "fair and reasonable" in order to be deductible.

Regarding foreign-source income earned by Argentine residents, any payment of foreign taxes can be taken as a credit against the payment of the applicable Argentine tax. However, the credit may only be applied to the extent that the foreign tax does not exceed the Argentine tax.

Non-Argentine residents and legal entities without a permanent establishment in Argentina ("Foreign Beneficiaries") are taxed only on their Argentine-source income, through a withholding which the Argentine payer is responsible for. Based on the ITL, income will be deemed to be of Argentine source when it derives from assets located, placed or used in Argentina, or from the performance of any act or activity in Argentina that produces an economic benefit, or from events occurring in Argentina. Notwithstanding this general rule, the ITL also takes into account certain special rules for the source of income derived from specific activities such as international transport, telecommunications and "technical assistance" services rendered from abroad, even though, under the general rule, a service performed from abroad is deemed to be a foreign-source income.

3.1.1 Taxation on Argentine Residents

Local Companies and Branches

Income tax on local companies and branches is applicable in two stages:

(i) a first stage charged on the company or branch level at a tax rate of 30% applicable for the fiscal periods starting on January 1, 2018, until January 1, 2021; and to 25% applicable for the fiscal periods starting thereafter; and

(ii) a second stage charged on the shareholder or owner level, in the case of an Argentine resident individual or a Foreign Beneficiary at a tax rate of 7% if the distributed profit derives from fiscal periods starting on January 1, 201, until January 1, 2021, or at a tax rate of 13% if the distributed profit derives from fiscal period starting thereafter.

Individuals

Argentine resident individuals are taxed on their worldwide net income on a sliding scale from 5% to 35%, depending on their net income during the fiscal year.

However, any net income arising from the transfer of shares, securities representing shares and certificates of deposit of shares and any type of corporate participations, including mutual funds shares and rights over trusts and similar contracts, is charged at a tax rate of 15%. The same tax rate (15%) will be applicable to net income derived from the sale of real estate or transfers of property rights.

However, any gain derived from the transfer of shares, securities representing shares and certificates of deposit of shares carried out through stock exchanges or stock markets authorized by the Argentine Securities and Exchange Commission is exempt for Argentine resident individuals.

3.1.2 Definition of Permanent Establishment

The ITL provides a definition of Permanent Establishment ("PE"), which follows, in general terms, the definition provided by the OECD's Model of Tax Convention for the Avoidance of Double Taxation, al-

though certain rules provided by the Model of Tax Convention of the UN were incorporated. Under the PE definition contained in the ITL, a PE means a fixed place of business through which the business of a foreign enterprise is wholly or partly carried out. The definition also includes the provision of services under certain circumstances, and the use of agents with certain features (e.g., if the agents are not independent, do not act in the ordinary course of their business, etc.).

If a foreign enterprise were found to have a PE in Argentina, such PE would be deemed to be an Argentine resident for tax purposes and would be subject to tax in Argentina on the profits attributable to it (based on separate accounting and records) and transfer pricing provisions should be observed.

3.1.3 Transfer Pricing Provisions

Transfer pricing practices take place when an Argentine company enters into business transactions with:

(i) a related company located abroad, or

(ii) a non-related company located in a non-cooperative jurisdiction, or

(iii) a non-related company located in a nil or low-tax jurisdiction,

and the prices agreed on in such transactions do not reflect normal market practices (i.e., they are not at arm's length).

According to transfer pricing provisions set forth in Article 17 of the ITL, any transaction between related companies or unrelated companies located in a non-cooperative jurisdiction or a nil or low-tax jurisdiction are deemed not to be at arm's length unless evidence to the contrary is provided. To establish that the terms of the transaction are on equal footing (i.e. arm's-length compliance), businesses in Argentina must submit special reports to the Argentine Tax Authority with detailed information including data and supporting documentation.

Article 19 of the ITL defines "non-cooperative jurisdiction" as any jurisdiction that: (i) has not signed an information exchange agreement with Argentina; (ii) has not signed a Convention for the Avoidance of Double Taxation with Argentina; or (iii) has signed either an agreement or convention but does not comply with its obligation to share information with Argentina. According with the ITL, the Argentine Executive will be responsible for issuing the list of non-cooperative jurisdictions (the "blacklist"). Article 24 of the ITL's regulatory decree provides a list of the jurisdictions that are considered as "non-cooperative".

Article 20 of the ITL defines "nil or low-tax jurisdiction" as any country, jurisdiction dominium, territory, associated state or special tax regime in which the maximum corporate income tax rate is lower than 60% of the corporate income tax rate provided in Article 73 (subsection a) of the ITL for local entities (25%). Therefore, to avoid being regarded as a nil or low-tax jurisdiction, the maximum corporate income effective tax rate of a given jurisdiction or special tax regime must be equal or higher to 15%.

3.1.4 Taxation on Foreign Beneficiaries

3.1.4.1 General Rule

In principle, any income deemed by the ITL to be from an Argentine source obtained by a Foreign Beneficiary is subject to withholding tax, and the Argentine payer is responsible vis-a-vis the Argentine Tax Authority for the payment of the tax.

To determine the effective withholding rate, a 35% rate is applied to a presumed net income provided by the ITL that varies depending on the type of income. For certain types of income, the ITL allows the Foreign Beneficiary to apply the 35% rate on the real net gain obtained, instead on the presumed rate provided by the ITL. Should the local payer assume the obligation to support the tax burden of the Foreign Beneficiary, the net amount payable must be grossed up in an amount equal to the tax assumed by the Argentine payer.

Argentina is party to a number of Conventions for the Avoidance of Double Taxation, that impose ceilings on withholdings rates of certain taxable gains, and which may reduce the domestic withholding rates (please refer to section 3.5 of this chapter to find a list of the jurisdictions with which Argentina has entered into this kind of treaties).

3.1.4.2 Capital Gains

Income derived from the sale, exchange or other disposition of shares, securities representing shares and certificates of deposit of shares and any type of corporate participations of an Argentine company by Foreign Beneficiaries is subject to income tax, at the following tax rates: (i) if the seller is located in a cooperative jurisdiction: 15% on the net gain or 13.5% on the gross amount of the transaction, at the option of the seller; or (ii) if the seller is located in a non-cooperative jurisdiction: 35% on the net gain, or 31.5% on the gross amount of the transaction, at the option of the seller.

Regarding the payment of the tax, if the buyer of the securities is an Argentine resident, it will be responsible for withholding and paying the tax to the Argentine Tax Authority. If the buyer is also a Foreign Beneficiary, the tax must be paid by the seller through its legal representative domiciled in the country or directly by such seller via international wire transfer.

The ITL provides an exemption on capital gains obtained by Foreign Beneficiaries, to the extent that said beneficiaries do not reside in, and the funds do not come from, non-cooperative jurisdictions. In such cases, any gain derived from the transfer of shares, securities representing shares and certificates of deposit of shares carried out through stock exchanges or stock markets authorized by the Argentine Securities and Exchange Commission will be tax exempt. In addition, the ITL also provides an exemption to the interest and/or profit accrued on, and any capital gain resulting from any form of disposal of, public bonds and negotiable obligations issued by Argentine companies, if certain conditions are met.

3.1.4.3 Indirect sale of assets located in Argentina

If a Foreign Beneficiary transfers shares, quotas, participations and other rights representative of the capital or equity of an entity incorporated, domiciled or located abroad, the resulting income will be considered as an Argentine-source income as long as the following conditions prevail: (i) the value of the shares, participations or rights of the foreign entity, at the time of sale or in any of the 12 previous months, represent, at least, 30% of the value of the assets that the entity owns directly or indirectly in Argentina; and (ii) the sold shares, participations or rights of the foreign entity represent 10% of the equity of that entity, at the time of their disposal or in any of the 12 previous months.

The Foreign Beneficiary may opt to pay 15% on the net gain or 13.5% over the gross amount of the transaction, but only in the proportion of the participation of the Argentine assets on the value of the disposed shares.

The tax will not apply if the transfer is done within an economic group.

3.2. Personal Assets Tax

Personal Assets Tax Law No. 23,966, as amended, states that all Argentine resident individuals and undivided states located in Argentina are subject to a tax on their worldwide assets held at December 31 of each year; non-Argentine resident individuals and undivided states not located in Argentina are only liable for this tax on their assets in Argentina. Shares, other equity participations and securities are only deemed to be located in Argentina when issued by an entity domiciled in Argentina.

For Argentine resident individuals and undivided estates located in Argentina, the Personal Assets Tax is imposed on taxable assets existing as of December 31 of each year if the aggregate value thereof exceeds the amount of ARS 2,000,000. If the aggregate value of the assets existing as of December 31 exceeds that amount, if such assets are located in Argentina, the tax must be exclusively applied to the amounts exceeding such aggregate amount, and must be calculated as follows:

Overall amount of the assets exceeding the tax allowance		Payment of fixed amount of ARS	Plus a variable amount of %	Over the amount exceeding the sum of ARS
More than ARS	To ARS			
0	3,000,000	0	0.50%	0
3,000,001	6,500,000	15,000	0.75%	3,000,000
6,500,001	18,000,000	41,250	1.00%	6,500,000
18,000,001	Onwards	156,250	1.25%	18,000,00

If assets are located abroad, the applicable rates are higher pursuant to a sliding scale from 0.70% up to 2.25%. However, these higher rates will not be applicable if the taxpayer transfers funds representing at least 5% of the total value of the assets located abroad to an Argentine financial entity by March 31 of each year and holds them in such entity until December 31 of the relevant year.

Non-Argentine residents and undivided states not located in Argentina are only liable for this tax on the value of their assets held in Argentina at a fixed rate of 0.50%.

The tax on shares and other equity participations in Argentine companies is paid by the local company itself, which may seek reimbursement from its shareholders. The applicable rate is 0.50% on the company's net worth.

3.3 Conventions for the Avoidance of Double Taxation

Argentina has signed Conventions for the Avoidance of Double Taxation with the following countries: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, the United Arab Emirates, Finland, France, Germany, Italy, Mexico, Norway, Russia, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom and Uruguay.

Recently, the Argentine Executive signed tax treaties with Austria, China, Japan, Luxembourg, Qatar and Turkey, but they are pending approval by the Argentine Congress. In general, these treaties are based on the OECD model. To date, there is no tax treaty in effect between Argentina and the United States.

3.4 Value-Added Tax (VAT)

Value-added tax ("VAT") applies to the sale of goods, the provision of services and the import of goods in Argentina. Services rendered outside Argentina that are effectively used or exploited in the country ("importation of services") are deemed rendered in Argentina and thus subject to VAT to the extent that the recipient of the service is a VAT registered taxpayer. In addition, digital services rendered abroad are taxed regardless of the tax status of the recipient of the services.

Exports of goods and exports of services (services rendered in Argentina, which are effectively used or exploited abroad) are not subject to VAT.

VAT is paid at each stage of the production or distribution of goods or services based on the value added during each of the stages. This means that the tax does not have a cumulative effect. The tax is levied on the difference between the so-called "tax debit" and "tax credit." The difference between the "tax debit" and the "tax credit," if positive, constitutes the amount to be paid to the Argentine Tax Authority. The current general rate for this tax is 21%. However, sales and imports of capital goods are subject to VAT at a lower tax rate of 10.5%.

The VAT Law provides that, in certain cases, after 6 consecutive fiscal periods counted as of the one in which its computation resulted, tax credits originated in the purchase, construction, manufacturing

or definitive importation of capital assets (except automobiles) that created a balance in favor may be refunded in cash. If, after 60 months, counted as of the following month of the refund, the sums received have not been applied vis-à-vis to certain tax debits generated by the taxpayer, the responsible party must reimburse an amount equal to the non-applied credits.

3.5 Tax on Credits and Debits in Bank Accounts

This tax is levied on debits and credits from and to Argentine bank accounts and on other transactions that, due to their special nature and characteristics, are similar or could be used in substitution of a bank account, such as payments on behalf of or in the name of third parties. Transfers and deliveries of funds also fall within the scope of this tax, regardless of the person or entity that performs them, when those transactions are made through organized payment systems as a substitute for bank accounts. Tax law and regulations allow for several exemptions to this tax.

The general rate of the tax is 0.6% on each credit and debit in bank accounts. An increased rate of 1.2% applies in cases in which there has been a substitution for the use of a bank account. In both cases, 33% of the tax so paid can be computed as a credit against Income Tax. In certain cases, a reduced tax rate of 0.075% may apply, in which case only 20% of the tax so paid can be computed as a credit.

3.6 Export Duties for services

Law No. 27,467 introduced certain amendments to the Customs Code, levying export duties on the services rendered in Argentina whose use or effective exploitation takes place abroad (“exportation of services”). In this respect, export of services are levied at a 5% rate, this tax being applicable until to December 31, 2021.

3.7 Tax for an Inclusive and Solidary Argentina

At the end of 2019, Law 27,541 created a new emergency tax “for an Inclusive and Solidary Argentina” (the “PAIS Tax” after its Spanish acronym).

The PAIS Tax applies within the Argentine territory on the following transactions:

(i) Purchase of foreign currency, including traveler’s checks, for saving purposes or without specific destination made by Argentine residents.

(ii) FX transactions made by financial entities on behalf of the purchaser of goods or the borrower of services, for the purpose of payment of those goods or services acquired abroad, as long as the payment is made through charge, credit or debit card. This provision includes: (a) cash withdrawals and cash advancements with credit cards and (purchases made through e-commerce websites or other modalities in foreign currency.

(iii) FX transactions made by financial entities on behalf of an Argentine resident which is borrower of a service rendered by a non-Argentine resident, for the purpose of payment of such service, as long as the payment is made through charge, credit or debit card.

(iv) Acquisition of services abroad through travel and tourism agencies in Argentina.

(v) Acquisition of passenger transportation services (by any means of transport) with an international destination, as long as a FX transaction to acquire the relevant foreign currency to cancel the purchase is required, in accordance with the guidelines that will be provided by impending regulations.

The PAIS Tax applies over Argentine residents, whether individuals, undivided estates, legal entities or any other that could be held liable for the payment of taxes as an Argentine resident, who perform the transactions mentioned above.

Certain transactions are exempt from the PAIS Tax (such as transactions made by the Public Sector at federal, provincial and municipal level; the payment of health expenses and purchase of medicines; the purchase of books in any format; etc.).

The general tax rate is 30% of the gross amount invoiced. However, a reduced rate of 8% applies to services that qualify as digital services for VAT purposes.

The tax base is the total amount of each transaction subject to the PAIS Tax. In the case of transactions mentioned in section (e) above, the tax rate is the price charged by the transportation company, net of taxes and fees.

To assess the PAIS Tax, the USD charge must be converted into Argentine Pesos using the selling FX rate published by *Banco Nación* (the national bank of Argentina). The rate used is the previous working day to the issuance of the credit card or the statement issued by any intervening Argentine payment platform.

3.8 Turnover Tax (Tax on Gross Income)

Turnover tax is a local tax levied on gross income (revenue) resulting from business activities carried out within any of the twenty-three (23) Argentine provinces and the City of Buenos Aires. Each of the provinces and the City of Buenos Aires apply different tax rates to different activities and provide different tax exemptions. In order to avoid double or multiple taxation on activities carried out in more than one jurisdiction, all twenty-three (23) Argentine provinces and the City of Buenos Aires have entered into a Multilateral Agreement pursuant to which taxpayers allocate turnover tax base (revenue) between the different jurisdictions by applying a coefficient based on revenue obtained and expenses incurred in each jurisdiction. Once the revenue is allocated among the relevant jurisdictions, each of them applies the tax treatment and tax rates provided in their local regulations.

3.9 Stamp Tax

Stamp tax is a local tax applicable on onerous acts and contracts formalized on public or private instruments executed in Argentina or, if executed abroad, are deemed to have effects in one or more relevant jurisdictions within Argentina. In general, this tax is calculated on the economic value of the instrument. All parties are jointly and severally liable for the payment of this tax.

Protection of Intellectual Property

Bariloche, Río Negro

Section 17 of the Argentine Constitution protects intellectual property, stating: "All authors or inventors are the exclusive owners of their works, inventions or discoveries for the period of time established by law."

Since 1966, Argentina has been a party to the Paris Convention, incorporating the Lisbon Agreement of 1958. Argentina also has approved the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") provisions of the General Agreement on Trade and Tariffs ("GATT").

4.1 Trademarks and Trade Names

Trademarks and trade names are governed by Trademark Law No. 22,362 of December 26, 1980, (modified by Law No. 27.444 of May 30, 2018) together with its regulatory decree No.242/2019, as amended on April 1, 2019 (the "Trademark Law"). This law determines that the ownership of a trademark and the right to its exclusive use are obtained by registration with the Patent & Trademark Office (*Instituto Nacional de Propiedad Industrial*, or "INPI" after its acronym in Spanish). The registration grants proprietary rights. On April 9, 1981, Argentina adopted the International Classification of Goods and Services.

The duration of a trademark registration is 10 years as from the date it is granted. It can be renewed indefinitely for periods of 10 years provided that the trademark has been used in connection with the sale of a product, the rendering of a service, or as a trade name during the five-year period preceding each expiration date.

Renewal of a trademark registration can be filed 6 months in advance or after the renewal deadline.

A trademark holder may apply for a preliminary injunction based on the TRIPS Agreement and the Argentine Civil and Commercial Procedure Code (the "CPCCN" after its acronym in Spanish). In both cases, the applicant must provide reasonably strong evidence for the injunction to be granted, demonstrating that:

(i) the applicant is the trademark holder; and

(ii) there is a prima facie infringement or an imminent infringement.

In addition, adequate security or assurance must be given to cover possible damages that may be caused by the alleged infringer.

New trademark opposition process

In January 2018, the government issued Decree No. 27/2018 which includes a number of provisions affecting trademarks aimed at shortening prosecution and simplifying the opposition process. On May 30, 2018 Congress passed a law to replace Decree 27/2018, and the INPI issued a series of regulations regarding the new opposition process. According to the new rules, once formally notified of third parties' oppositions by the INPI, the applicant has a three-month period to reach a settlement with the opponents. In the absence of an agreement by the mentioned term, the INPI will notify the opponent, who will have an opportunity to ratify the opposition. The lack of ratification will result in the termination of the opposition proceedings.

Under the new opposition process, the applicant and opponent can file additional arguments and evidence in support of their respective claims and can then submit final arguments.

The INPI must decide on the merits of the oppositions in a ruling which may be appealed before the Federal Court of Appeals.

Mid-term declaration of use

Law No. 27,444 introduced the obligation to submit a mid-term sworn declaration of use with respect to trademarks that have been on the Register for 5 years. This new requirement should be complied with between the 5th and 6th year of the registration of a trademark, if the trademark has been in use. This is

in addition to the declaration of use that must be submitted for renewal purposes on the 10th anniversary of the registration.

In case of late filing of the declaration of use, the new regulations establish an obligation to pay an additional official fee for each year of non-compliance.

Failure to submit the mid-term declaration of use will lead to the rebuttable presumption that the trademark has not been used and will therefore make the registration vulnerable to third parties´ requests for non-use cancellation.

Non-use cancellation

The Trademark Law establishes that a trademark may be partially cancelled for non-use if it has not been used for 5 years in relation to goods or services covered by the registration or on related goods or services. Cancellation *in totum* continues to apply for trademarks which have not been used at all. Non-use cancellation actions shall be decided by the Trademark Office, ex officio or at the request of third parties. Upon service of notice to the trademark owner, there are fifteen working days to respond and submit proof of use. The Trademark Office will then issue a decision that can be appealed before the Federal Court of Appeals.

Should non-use cancellation be requested within an opposition procedure, it will be decided in the context of such procedure

Non-use cancellation will proceed ex-officio only provided that:

(i) the trademark has not been used within the previous five years;

(ii) the trademark owner has not submitted a mid-term sworn declaration of use;

(iii) the trademark involved is not well-known in the terms of the Paris Convention and the TRIPs agreement;

(iv) the trademark owner does not own an identical trademark registered in a related class; or if there is such an identical trademark in a related class, the trademark owner failed to submit a sworn declaration of use.

Invalidity

The Trademark Law establishes that trademarks may be invalidated by the Trademark Office ex officio or at the request of third parties. Invalidation before the Trademark Office may only proceed for registered trademarks. Upon service of notice to the trademark owner, there are fifteen working days to respond and submit evidence. The Trademark Office will then issue a decision than can be appealed before the Federal Court of Appeals.

Invalidity will only proceed ex-officio if there is a procedural defect that cannot be remedied.

Should invalidity be requested within an opposition procedure? It will be decided within the context of such procedure.

4.2 Patents – Utility Models

4.2.1 Patents

Patents and utility models in Argentina are governed by Law No. 24,481, as amended, and Decree No. 260 of March 20, 1996 (the “Patent Law”).

As mentioned above, Argentina has adhered to the Paris Convention (see Law No. 17,011) and is a member of the TRIPS Agreement (see Law No. 24,425) but not the Patent Cooperation Treaty (the “PCT”).

The Patent Law allows patents to be granted for any invention that complies with the requirements of novelty, inventive step and industrial application. Disclosure of an invention by the inventors or their lawful successors by any means of communication or exhibition in a fair within a period of one year immediately prior to an application for a patent or of the recognized priority is not a bar to obtaining a valid patent. Patents are granted for 20 years as from the filing date.

The owner of a patent granted in Argentina has the right to prevent third parties from manufacturing, using, offering for sale, selling, or importing the patented product without his or her consent. The protection for process patents covers use of the process and also the manufacturing, using, offering for sale, selling, or importing the product obtained directly by that process.

The reversal of the burden of proof is available for process patents without distinction as to the field of technology. Such reversal of the burden of proof will not be applied, however, when the product directly obtained from the patented process is not new. A product is not considered new if there was another product from another source other than the patentee or the alleged infringer on the market at the time of infringement that did not infringe the product and was obtained directly from the patented process.

Patent applications may be filed in the name of an individual or a legal entity.

Patents and utility models may be assigned and licensed, in whole or in part. The assignment must be recorded with the INPI to be effective vis-à-vis third parties.

With respect to plants, as of September 1994, Argentina has been party to the International Convention for the Protection of New Varieties of Plants (the "UPOV" after its acronym in Spanish), as revised in Geneva in 1978.

4.2.2 Pharmaceutical Patents

With the enforcement of the TRIPS Agreement on October 24, 2000, pharmaceutical product patents were granted in Argentina for the first time in more than 130 years. The enforcement of these patents is identical to that of other non-pharmaceutical patents.

On May 2, 2012, the INPI, along with the former Ministries of Industry and Health, issued Joint Regulation Nos. 118/2012, 546/2012 and 107/2012 with new guidelines for examining chemical-pharmaceutical patent applications. This Regulation was published in the Official Gazette on May 8, 2012 and became effective on May 9, 2012.

In essence, this regulation severely restricts the patentability of several categories of inventions in the pharmaceutical field and can be summarized as follows:

(i) Claims directed to polymorphs of known compounds will not be allowed, as polymorphism is considered to be an intrinsic property of matter in its solid state and thus is not considered to be an invention. Additionally, processes to obtain polymorphs constitute routine experimentation and therefore are not patentable. Similar considerations apply to hydrates and solvates, which are also considered polymorphs.

(ii) Single enantiomers are not patentable when the racemic mixture is known. However, novel and inventive processes for obtaining enantiomers may be patentable if they are clearly disclosed and the resulting compound is fully characterized by spectroscopic data.

(iii) Compounds represented by Markush structures will be accepted if the specification includes examples representative of all the claimed compounds. Such examples must include physicochemical data for each compound obtained.

(iv) Selection patents will not be considered novel and will not be recognized for the selection of one or more elements that were already generically disclosed in the art (such as in a Markush claim), even if these elements show different or improved properties.

(v) Salts, esters and other derivatives of known substances, such as amides and complexes, are considered the same substance and are not patentable.

(vi) Active metabolites are derivatives from the active ingredients produced in the body and cannot be considered "created" or "invented." Metabolites are not patentable as an object independent from the active compound.

(vii) Prodrugs must be supported by the specification, which must include the best method for obtaining them and their characterization. The specification must also show that the prodrug is inactive or less active than the active compound.

(viii) New formulations and compositions as well as the processes for preparing them should generally be deemed obvious over the prior art. Exceptionally, claims directed to formulations will be acceptable when a long-felt need is solved in a non-obvious manner.

(ix) Claims directed to combinations of known active compounds, second medical uses or dosage regimes will be considered as equivalent to methods of treatment, which are excluded from patent protection.

(x) Any additional example or information filed during the patent prosecution process will be considered as far as it does not broaden the original disclosure.

(xi) Manufacturing methods must be reproducible on an industrial scale. Therefore, processes for the manufacture of active compounds disclosed in a specification must be reproducible and applicable on an industrial scale.

According to the regulation, these guidelines make up the general instructions for patent examiners. Experience with the general guidelines for patent examination has shown, however, that in practice such guidelines operate as very specific legal provisions that must be adhered to.

The constitutionality of this regulation is being challenged since it could be argued that it is contrary to the TRIPS Agreement, the Argentine Constitution, and Argentine Patent Law.

4.2.3 Biotech Inventions

The INPI issued Regulation No. 283/2015, published in the Official Gazette on October 5, 2015, to amend the Patentability Guidelines on biotechnological inventions.

In general terms, the regulation incorporates the current practice of the INPI regarding the patentability of biotechnological inventions to the Patentability Guidelines.

The main amendments are as follows:

(i) Homology/Identity Percentage: The regulation does not allow the definition of molecules based on homology/identity percentages and requires that the claimed sequence be specifically disclosed and exemplified in the specification.

(ii) Plants and Animals: Consistent with the INPI's practice, plants and animals are non-patentable subject matter irrespective of whether they are modified or not.

(iii) Plant parts (seeds, cells, flowers, etc.) and components (organelles, DNA molecules, etc.) as well as animal parts (organs, tissues and animal cells) and components (organelles and DNA molecules): These are patentable subject matter as long as they are modified, isolated and cannot regenerate into a complete organism.

(iv) Transformation Events: Event claims are allowed, provided the following requirements are met:

(a) the entire sequence of the insert is disclosed,

(b) the flanking regions with at least 100 pairs of bases is disclosed, and

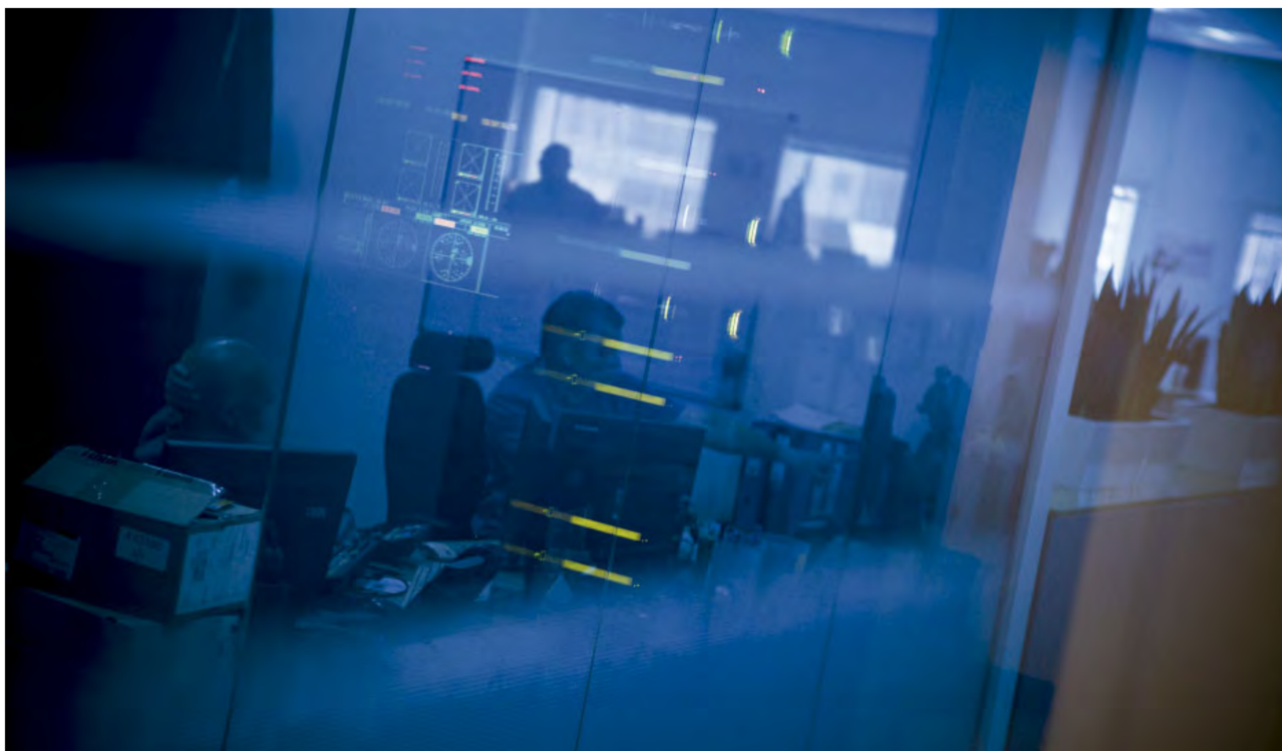
(c) the certificate of deposit of the biological material is referenced.

(v) Isolated: The regulation provides a definition of the term "isolated," which requires the claimed element to be separated from any organism.

The constitutionality of this regulation could also be challenged as being contrary to the TRIPS Agreement, the Argentine Constitution, and Argentine Patent Law.

4.2.4 Software Patents

The INPI issued Regulation No. 318 on December 7, 2012, which introduced a new Annex on the Protection of Patents Related to Computer Programs. The new annex loosely corresponds to the guidelines issued by the European Patent Office (the "EPO") on June 20, 2012, although it is more restrictive regarding computer programs, which, according to Section 6 of the Argentine Patent Law, are not acceptable.



Regulation No. 318 summarizes the current official criterion on software patents:

(i) A computer program, claimed as such or stored in a computer readable media, is not patentable regardless of its contents, since it has been conceived as a non-technical work.

(ii) This applies also when the computer program is done by a known computer.

(iii) On the other hand, if the claimed object makes a technical contribution to the state of the art, patentability must not be denied simply because a computer program is involved.

(iv) All inventions involving a computer program that provide a technical solution to a specific problem in a technical field may be considered patentable.

These new guidelines on software patents summarize the official criterion that has evolved since 2003. Examples that may be considered as having a technical character are: (i) the processing of physical parameter data handled or transmitted by a computer, and (ii) any method or process that may enhance the technical operation of a computer system or connection between computers.

4.2.5 Accelerated Examination

The INPI issued Regulation No. P-56/2016, which became effective on October 15, 2016. It allows applicants to accelerate the prosecution of pending patent applications.

Under this Regulation, the INPI will consider any patent application for which the examination had not begun by October 15, 2016. The application must satisfy the substantive requirements of patentability (i.e., novelty, non-obviousness and industrial application) and a patent must have been granted abroad for the same invention (regardless of whether a priority has been claimed or not) by a foreign patent office carrying out substantive examination in a country whose patent law has the same substantive requirements as Argentina.

In such cases, the patent will be granted provided that:

(i) the scope of the claims of the application in Argentina is the same or narrower than that of the foreign patent;

(ii) there is no domestic prior art;

(iii) when no foreign priority has been claimed, the disclosure of the invention has taken place abroad after the filing date in Argentina;

(iv) third-party oppositions, if any, have been studied; and

(v) the foreign office that granted the equivalent patent shares the same patentability criteria.

Applicants can voluntarily request the application of this regulation, and the INPI will issue a decision within 60 days as from the filing of the request.

Alternatively, the INPI can issue an "office action" requesting the applicant to conform the scope of the claims to that of a granted equivalent. The term to comply with such request is 90 days.

4.2.6 Preliminary Injunctions

A patent holder may apply for an injunction based on the TRIPS Agreement, the CPCCN and Argentine Patent Law No. 24,481.

For the injunction to be granted, the applicant must provide reasonably strong evidence of:

(i) likelihood of validity;

(ii) likelihood of infringement;

(iii) irreparable damage to the patentee; and

(iv) balance of hardship.

Please note that an official technical expert must be appointed to issue a report on both points i) and ii).

In addition, a bond must be posted in the event that the preliminary injunction is granted.

If the court considers that the evidence is not sufficiently persuasive, then there is another proceeding for patent infringement cases provided for in the Patent Law called *"incidente de explotación."* In this proceeding, the holder of the title may require alleged infringers to post a bond or give adequate guarantees to cover possible damages in the event that the court finally decides there is an infringement. Alternatively, the alleged infringer may elect not to post the requested bond and interrupt the objected use and, in turn, require that the bond or guarantee be posted by the plaintiff.

4.2.7 Other Remedies

Apart from applying for preliminary injunctions, the claimant may also make a claim for damages consisting of compensation for the damages that the plaintiff can effectively prove it suffered (e.g., loss of profits, failure to collect a reasonable royalty, price erosion). In general, punitive damages are not available.

4.2.8 Utility Models

Utility model protection is available for any new arrangement or shape of tool, work instrument, utensil, device or object of an industrial nature, provided that the new arrangement or shape is novel in Argentina and improves the way an object function. Utility model certificates are granted for a non-extendible term of 10 years from the filing date.

4.3 Industrial Designs and Models

Registrations are granted for industrial designs or models to protect the appearance or shape of an industrial product that gives it an ornamental character. Applications may be filed in the name of an

individual or a company. A foreign individual or legal entity must establish a legal domicile in the City of Buenos Aires.

A single registration may cover up to 50 different examples of a single model or design, as long as they are homogeneous.

In the absence of prior publication or use in Argentina or abroad, a valid registration may be obtained for a term of five years, renewable for two further terms of five years each.

If a design application has been filed abroad, an application for a design registration in Argentina must be filed within six months from the filing date of the foreign application.

4.4 Domain Names

There is no legislation in Argentina dealing specifically with domain names registered under the internet country code top-level domain (ccTLD.ar). However, the Argentine government has passed administrative resolutions to regulate the domain name registration procedure.

Registration confers the exclusive right of use to the proprietor. Domain names may be subject to dealings such as assignment and liens.

4.5 Copyright

Protection of copyright in Argentina is based on the constitutional principle set out in Section 17 of the Argentine Constitution. But copyright matters are specifically governed by Law No. 11,723 of September 26, 1933, as amended (the "Intellectual Property Law", or the "IP Law").

The IP Law extends protection to scientific, literary, artistic or educational works, regardless of the process of reproduction. As a result of the broad definition of protected works, copyright protection has been granted to:

(i) writings (as in dictionaries, prayer books, almanacs and articles);

(ii) musical works and plays;

(iii) cinematographic, choreographic and pantomime works (as long as these works have been materialized in a tangible form);

(iv) drawings, paintings and sculptural works;

(v) architectural, artistic or scientific works;

(vi) maps, plans and other printed matter;

(vii) plastic works, photographs, engravings and phonograms;

(viii) titles and characters as an integral part of a work;

(ix) works of applied art;

(x) computer software and databases; and

(xi) derivative works, new versions, compilations and translations.

As a general rule, the IP Law grants rights to the author for life and to his or her heirs and successors in title for 70 years as from January 1 following the author's death.

Argentine Copyright Law establishes the obligation to register published works with the Copyright Office. Although this requirement has been criticized as being an anachronism, it has also been pointed out that registration is useful for evidentiary purposes as it provides a rebuttable presumption of authorship and a definite creation date for the work (i.e., the certainty that the work was created by a certain date).

This registration requirement is limited to Argentine works which have been edited with copies available to the public, and it does not extend to works published via performance or exhibition. This obligation lies with the editor and must be complied with within three months from publication.

The form of the deposit depends on the nature of the work. The general rule is that three complete copies must be deposited with the Copyright Office, but for paintings, architectural works, sculptures and the like, a sketch or photograph would suffice; for cinematographic films, the deposit consists of an account of the plot, dialogues, photographs and the settings of the main scenes; for photographs, plans, maps and phonograms, copies thereof must be deposited; and for computer programs, specific requirements are established in the regulatory decree. There is no deposit requirement for works that are performed or executed in theaters, or broadcast by radio or television, or displayed in art galleries.

The deposit is made with the Copyright Office online and the copies of the work have to be taken to the Copyright Office.

As of the filing of the work, 7 to 10 working days may pass until registration is granted, which is notified by email.

Although copyright exists from the moment the work is created and not when it is deposited with the Copyright Office –as this deposit is only declarative of a preexisting right and does not create it– failure to register the work entails the suspension of the author's rights until registration is made, whereupon said rights are recovered immediately, without prejudice to the validity of all acts carried out by unauthorized third parties in the meantime prior to said registration. The suspension of the author's rights affects only economic rights in the work, but not the author's moral rights nor the protection against criminal infringement. Moreover, the courts have not required registration for the enforcement of copyright.

Works published abroad need not be registered in Argentina, and in their regard it is only necessary to prove that all formalities required in the home country (i.e., where publication took place) have been fulfilled, unless the Berne Convention is applicable, in which case no formality will be necessary, or the Universal Copyright Convention is applicable, in which case the © symbol, the name of the copyright owner and the year of first publication must be set forth.

Registration of unpublished works is not mandatory. If registered, registration takes place upon receipt of the work in a sealed envelope and it must be renewed every three years. Otherwise, the Argentine Copyright Office will destroy the copy of the work deposited.

4.5.1 Computer Software

Argentine Law No. 25,036, which came into effect on November 19, 1998, amended Section 1 of the IP Law so that it now includes "*computer programs both in source and object codes, databases or compilations of other material*" within the scope of the works protected. The amendment confirms the established legal principle that copyright protection is granted to the expression of ideas, procedures, operational methods and concepts but not to the ideas, procedures or methods themselves.

Law No. 25,036 determines that computer software components and documents may be registered with the relevant authorities to enjoy protection rights.

4.6 Trademark, Patent, Know-How Licensing Agreements and Other Technology Transfer Agreements

Trademark licensing and technology transfer agreements executed by a resident as licensee and a non-resident as licensor, provided a consideration is involved, fall under the provisions of Law No. 22,426, as amended. Regulatory Decree No. 580/1981 defines technology as any patent, industrial model or design, and any other technical knowledge directly applicable to the productive activity of the local licensee. Registration of the agreements with the technology transfer authorities is necessary to enjoy preferential withholding income tax rates and Double Taxation Treaties, if applicable.

According to Resolution No. 117/2014, license agreements between two local companies or between a local licensor and a foreign licensee may also be registered before the Argentine Transfer of Technology authorities for information purposes. Their submission is voluntary.

No previous administrative approval of technology transfer agreements between local entities and their foreign controlling entities is required under Argentine law. If the agreement is not registered, it is nevertheless valid and enforceable.

4.7 Indications of Source, Geographic Indications and Appellations of Origin

There are two pieces of legislation that regulate the protection of geographical indications ("GIs") in Argentina. The first is Law No. 25,163, published on October 12, 1999, and regulatory Decree No. 57/2004, which deal with wines and wine-based alcoholic beverages (spirits). The second is Law No. 25,380 (modified by Law No. 25,966, published on December 21, 2004) and regulatory Decree No. 556/2009, which cover agricultural and food products excluding wines and spirits. No other products outside the scope of this protection are eligible.

Any individual or legal entity that can demonstrate a legitimate interest has 30 days from the publication date to oppose the application for the registration of a GI and an Appellation of Origin.

Indications of source, GIs and appellations of origin already registered in the country of origin may be included in the Argentine Registry.

On November 1, 2017, Resolution No. 319-E/2017, issued by the former Ministry of Agroindustry, was published in the Official Gazette. The resolution regulates the procedure for the registration of GIs and Appellations of Origin (AOs) for the European Union and reflects the result of the ongoing negotiations between the European Union and MERCOSUR (Common Market of South America), with the aim of signing a free trade agreement.

The Trademark Law establishes that Appellations of Origin cannot be registered as trademarks. In addition, the regulatory decree of the law includes in this prohibition the GIs specifically recognized in Argentina.

In addition, Decree No. 247/2019 on Fair Trade refers to Laws Nos. 25,163 and 25,380, defines Appellations of Origin and forbids its use with regards to goods or services which do not proceed from that place. However, Appellations of Origin may be freely used when they have become the name or type of the good.

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Distribution and Agency Agreements

Puente del Inca, Mendoza

5.1 Distribution Agreements

While distribution agreements had not been legislated under Argentine law until the enactment of the Argentine Civil and Commercial Code (the "CCCN" after its acronym in Spanish), the rules of interpretation of their terms, written or not, had been established through case law.

The CCCN regulates distribution agreements not specifically but by applying the rules of the concession contract, as far as they are applicable.

In general terms, the CCCN establishes that the following:

(i) Unless the contracting parties agree otherwise, the assigned territory is exclusive and includes all of the goods and products sold by the grantor of the distribution agreement.

(ii) In terms of the obligations of the grantor, in addition to that which may be agreed between the parties, the law provides that: (i) they can agree on a sales target, (ii) the grantor must provide the distributor with the necessary goods to sell them in the assigned territory, (iii) the grantor must respect the territory, but the grantor can reserve the right for direct or special sales, (iv) the grantor must give the distributor information and technical support, and (v) the grantor must admit the use of trademarks and other commercial elements that may help the distributor to advertise in its territory.

(iii) The most important obligations of the distributor, in addition to what might be specifically agreed between the parties, are: (i) to buy exclusively from the co-contracting party, (ii) to respect the geographic limits, (iii) to provide pre-delivery services, (iv) to have a suitable location or locations, and (v) to provide the proper maintenance and training of the staff.

(iv) The term of the contract must be for no less than four years. If a shorter or undetermined period is agreed on between the parties, the duration is deemed to be four years. The law only allows parties to agree on a two-year term if the grantor of the distribution confers the distributor the use of major facilities.

(v) Retribution may consist of a margin of the resale of the products, goods or a commission.

As to termination of the contract, the law is designed to protect and benefit the rights of distributors, as seen in Sections 1492 and 1493 of the CCCN. These sections provide that to terminate a contract without cause, it is necessary to give the distributor one month's notice per year of the contract, without any limitation.

A shorter term of notice cannot be contractually established, but the parties can agree on a longer one. If the grantor does not give the required notice, it must pay the distributor the profits not earned due to the lack of sufficient prior notice.

The parties, however, can agree on other reasons for termination beyond those provided by Section 1494 (e.g., death or incapacity, dissolution, insolvency, unmet deadlines or repeated breaches serious enough to question the distributor's ability to accomplish their obligations). The law also provides for a shorter term of two months if the distributor's sales volume decreases for two consecutive years.

5.2 Agency Agreements

Agency agreements have also been legislated in the new CCCN.

In general, and particularly in the case of termination, the same rules apply as in distribution and concession agreements. However, the principle characteristic is that the agent promotes the business on the behalf of a third party.

The remuneration is usually a commission based on the value of promoted contracts. Contracting parties can also agree on other forms of remuneration.

The contract must be written, and it must include the agent's assigned zone. Unless the parties agree otherwise, it is presumed that the contract term is undetermined.

A new aspect of the law is the role of the agent. If it can be proved that the agent has been responsible for significant growth in the business, when the contract terminates the agent's role may be considered and recognized financially. However, this does not apply if the agent's conduct leads to the termination of the contract.

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Consumer Protection

Ischigualasto Provincial Park, San Juan

6.1 Principal Sources of Law and Regulation

Consumer protection has been a constitutional right since 1994. It is mainly governed by the Argentine Civil and Commercial Code and the Consumer Protection Law No. 24,240 (the "LDC" after its acronym in Spanish), as amended. Consumers also are protected by the fair-trade laws for labeling and advertising products, while antitrust laws protect consumers from the abuses of market manipulation and anti-competitive behavior. Further, criminal liability can also arise in specific cases where services or products intentionally, or through serious negligence, do not comply with applicable regulations or if the sale or marketing of the product involves fraud.

6.2 Consumer Protection

6.2.1 Overview

The law protects consumers throughout the different contractual phases of a purchase, from advertising to the delivery of goods (including used goods) or performance of services. The law is applicable to every consumer with the intent to acquire a product or service for any use that does not involve re-introducing it into the market.

Suppliers must provide consumers with truthful, objective and adequate information, which must be detailed, efficacious and sufficient on the essential features of the goods and services supplied, and their marketing conditions. Suppliers must comply with labelling and packaging requirements, providing information to consumers at the time products are introduced into the market. Additionally, those producers and suppliers who become aware that a product is dangerous after introducing it into the market must immediately inform this fact to the competent authorities and to consumers through adequate publications and, eventually, conduct corrective actions.

Products must be supplied or rendered in a way that their use under regular conditions does not present a danger to consumers' health. Those products or services that may pose a risk to consumer's health must be sold according to the applicable rules (or reasonable rules if there are no such applicable regulations), mechanisms and instructions to ensure safety.

The consumer and successive purchasers are entitled to a legal warranty affording protection against the defects or faults of any kind whatsoever. The whole supply chain is jointly and severally liable for granting and complying with a legal warranty.

6.2.2 Liability Regime

When a consumer is injured by a defect or risk of a product or service, the entire supply chain including the producer, manufacturer, importer, distributor, supplier, seller, and whoever placed the brand on the product or service, will be held liable.

To establish civil liability, there must be a causation link between the act or omission, the damage and the product or service.

Liability can be discharged only by proving that the supplier is alien to the cause of damage. The defendant must prove one of the following:

- That there is no causation between the damage and the product.
- Force majeure (for example, natural disasters or acts of war and terrorism, and so on).
- That the claimant was responsible for the damage.
- That the damage was caused by a third person and that the defendant has no contractual relationship with that third person.

The statute of limitations for product liability actions is three years. Limitation is generally calculated from the date of the event, for which the claimant is suing, to the date the complaint is filed. In practice, the event is when the fault was discovered.

Emphasis is made not only on damage compensation but also on its prevention. For this purpose, judges are authorized to issue preventive measures when consumer rights are at stake.

6.2.3 Proceedings

Before filing a judicial complaint, consumer protection disputes to be tried in the City of Buenos Aires and many other provinces must be submitted to pre-trial mandatory conciliation or mediation proceedings.

Settlements agreed in conciliation or mediation processes are binding and can be enforced as judicial judgments. If no agreement is reached, once the mediator or conciliator formally closes the proceedings, the consumer can file its complaint before the competent courts.

Class actions have obtained prominence in Argentina and have become increasingly frequent. The Argentine Supreme Court (the "CSJN" after its acronym in Spanish) intended to provide a partial solution to the complete absence of class action rules issued by the Argentine Congress.

The CSJN provided for class action admissibility rules and proceedings guidelines through its ruling *in re Halabi* v. Argentine Executive (2009), where it went on to identify the requirements of adequacy of representation, numerosity and commonality that must be met to allow this type of action, and later, by issuing two orders:

- An order creating the Public Registry of Collective Actions (Registry) and providing some basic procedural rules for Certification Orders.
- A later order more deeply focusing on the procedural rules related to the admissibility requirements and the type of decisions that should be rendered by courts to organize those cases.

The LDC entitles consumer non-governmental organizations (NGOs) to make claims in defense of a group of affected consumers. This law also provides for an opt-out system and allows the NGOs to litigate without having to pay court fees and other legal expenses.

6.2.4 Remedies

Consumers who successfully pursue a product liability claim can choose to:

(i) Request specific performance of the obligation provided, if such performance is possible.

(ii) Accept another product or the rendering of equivalent services.

(iii) Rescind the agreement with a right to reimbursement of any amount paid, irrespective of the effects already verified and considering the agreement in its entirety.

In addition to these remedies, consumers can claim compensatory damages, loss of profits, moral damages and punitive damages which are capped (approximately USD 80,000 at the exchange rate at the time of writing this report).

6.2.5 Consumer Protection Agency

The Ministry of Productive Development through the Consumer Protection Agency (CPA) is the National implementing authority for the LDC. The provinces and the City of Buenos Aires are the local implementing authorities.

The CPA can ban certain goods or services or require a supplier to recall a product when the damage or the defects of the products or services are verified. To verify such standards, the regulator can require production of information through administrative proceedings and eventually apply penalties to liable suppliers:

To prevent future harmful behavior to consumer rights, the LDC provides for administrative sanctions even if the damage did not occur.

There are specific regulators for particular goods or services such as the National Administration of Drugs, Food and Medical Technology, which is the national health authority for food, medical and pharmaceutical products.

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Antitrust Law

Cafayate, Salta

7.1 Argentine Antitrust Law

In 1994, when the Argentine Constitution was amended, protection against acts involving any kind of market distortion and the control of natural and legal monopolies were included as a constitutional right. On May 9, 2018, the Argentine Congress passed Law No. 27,442 (the "Antitrust Law"), set to replace former Antitrust Law No. 25,156, as amended by law No. 26,993. On May 24, 2018, the Antitrust Law entered into effect, and, on the same day, Decree No. 480/2018 was published in the Official Gazette, by means of which the Argentine Executive regulated certain core points of the Antitrust Law.

The Antitrust Law creates the Argentine Competition Authority, a new decentralized and self-regulated entity within the scope of the Argentine Executive. The Argentine Competition Authority is composed by the Antitrust Tribunal, the Secretariat of Instruction of Anticompetitive Behaviors and the Secretariat of Economic Concentrations. The Argentine Competition Authority has not been created yet. In the meantime, the current two-tier regulatory system continues to apply as with the previous regime, where the Antitrust Commission performs technical reviews on mergers and investigations and issues recommendations to the Secretariat of Domestic Trade, the ultimate ruling body.

7.2 Scope

Section 1 of the Antitrust Law prohibits certain acts or conducts relating to the production and exchange of goods and services if they limit, restrict, falsify or distort competition, or if they constitute an abuse of a dominant position in a given market, as further detailed in Section 7.3 below.

The Antitrust Law applies to all individuals and entities doing business in Argentina and to those who do business abroad to the extent that their acts, activities or agreements may have an impact in the Argentine market.

7.3 Description of Prohibited Practices

Under the previous antitrust regime (i.e. Law No. 25,156), there were no anticompetitive behaviors per se, since the current or potential damage to the general economic interest had to be determined in order to consider a conduct to be anticompetitive. The new Antitrust Law presumes that there are certain behaviors which are absolute restrictions to competition ("hard core" cartels), in order to enhance cartel prosecution. These agreements must be deemed null and will not generate any effects.

Those behaviors are now listed under Section 2 of the Antitrust Law, namely:

(i) to fix, directly or indirectly, the price of the purchase or sale of products and/or services;

(ii) (a) to establish obligations of manufacturing, distributing, buying or commercializing a limited amount of goods and/or (b) to provide a limited number, volume or frequency of services;

(iii) to divide, distribute or horizontally impose areas, portions or segments of the markets, clients or supply sources; or

(iv) to establish or coordinate submissions or abstentions in public tenders.

Additionally, the Antitrust Law also prosecutes certain conducts that may entail an abuse of a dominant position. In such cases, the offender must have (a) a dominant position in the relevant market, (b) the conduct must distort competition in that market either by exploitative or exclusionary means, and (c) there must be harm to the general economic interest.

On May 8, 2019, the Antitrust Commission published, after public consultation, the "Guidelines for the Analysis of Cases of Abuse of Dominance" with the aim of providing guidance regarding unilateral exclusionary abuses of dominance and contributing to render more predictable decisions.

7.4 Dominant Position

For the purposes of the Antitrust Law, "dominant position" includes situations where one or more persons are the only offeror or demanding party of a specific product within the Argentine market or in one

or more regions of the world. Even if that person is not the only offeror or demanding party in any of those markets, they can still be deemed to be holding a dominant position if they are not subject to substantial competition; or if by means of a vertical or horizontal integration, they are in a position to harm the economic viability of a competitor in the market.

7.5 Cartel Prosecutions

According to the interpretation of the Argentine Competition Authority, the existence of cartels is defined by the presence of competitors of the same relevant market that make arrangements to fix prices or production quotas, distribute market shares or coordinate submissions in public tenders, with the sole purpose of restricting competition. The Argentine Competition Authority has started to apply the conscious parallelism theory in some of its decisions.

7.6 Leniency Program

The Antitrust Law incorporates a leniency program in order to facilitate the investigation of “hard core” cartels by establishing two possible run-to-the-door scenarios for those who adhere to the benefit: full exemption or reduction of fines, as well as immunity from certain criminal sanctions and damages, with certain specific exceptions.

In order for the full exemption to apply, the petitioner must (i) be the first among those involved in the conduct to apply and supply evidence, (ii) immediately cease the anticompetitive action (iii), cooperate with the Argentine Competition Authority during the proceedings, (iv) not destroy evidence of anticompetitive behavior, and (v) not disclose the intention to adhere to the benefit. If the petitioner is not the first to adhere to the benefit, it may be eligible for a reduction of between 50% and 20% of the fine if it provides additional evidence to the investigation. The filing can be made at any time until a formal accusation is served on the parties.

7.7 Economic Concentrations (Mergers and Acquisitions) – Administrative Control

The Antitrust Law requires certain transactions resulting in economic concentrations (*concentraciones económicas*) to obtain prior approval from the Argentine Competition Authority. Transactions requiring such approval are those resulting in the taking of control of one or more companies by means of any of the following:

(i) mergers;

(ii) transfer of businesses;

(iii) acquisitions of any shares or any other rights that grant to the acquirer control of or a substantial influence over the issuer; and

(iv) any other agreement or act through which the assets of a company are transferred to a person or economic group or which gives decision-making control over the ordinary or extraordinary decisions of management of a company.

The requirement for approval of the Argentine Competition Authority applies when the relevant groups of companies involved in the transaction have a combined volume of business in Argentina of over 100,000,000 Adjustable Units (equivalent to ARS 4,061,000,000).

In relation to transactions that take place abroad, these must be notified if both parties do business in Argentina, either through a corporate presence or through sales made in Argentina.

Another novelty introduced by the new Antitrust Law is the introduction of an ex-ante control regime for economic concentrations. One year after the effective creation of the Argentine Competition Authority, companies will not be able to close a transaction without obtaining the prior authorization from said body. In the meantime, the current non-suspensory system remains in place, and a notification must be delivered to such authority prior to or within one week of the first to occur of either (i) the date that any transfer effectively occurs; or (ii) the publication of any cash tender or exchange offer. When filing, the notifying parties must pay a fee that can range from 5,000 Adjustable Units (equivalent to ARS 203,050) to 20,000 Adjustable Units (equivalent to ARS 812,200). This fee will be set by the Argentine Executive, which has not occurred yet. Therefore, the filing fee is not operative.

Failure to comply with the notification obligation will result in a daily fine of up to 0.1% of the consolidated national business volume of the group to which the company that failed to comply belongs. If said calculation cannot be carried out, the daily fine may be of up to 750,000 Adjustable Units (equivalent to ARS 30,457,500).

7.8 Timeline

The Antitrust Law establishes the following timeline:

The Argentine Competition Authority has a term of 45 business days after the notification to issue a resolution, provided that the information submitted is correct and complete.

If the transaction has the potential to restrict competition, the Argentine Competition Authority must communicate in writing (Statement of Objections) its objections and summon a special hearing to consider the remedies. In these cases, the term to resolve is extended up to an additional 120 business days.

If the Argentine Competition Authority considers that information has not been duly provided, the economic concentration could be considered as not notified.

Notwithstanding the above timeline, the authority is currently enforcing a "stop-the-clock" interpretation. This means that it considers that the first request for information stops the term of 45 business days, which will not start to run again until the necessary information for the issuance of the final resolution has been obtained. Currently, the average time that it takes the authority to issue a resolution is 6 to 9 months.

In addition, a summary proceeding is foreseen for certain concentrations (fast-track), to be regulated in the future.

It should be noted that the tacit approval of the notified transaction is contemplated but its implementation must be regulated.

7.9 Transactions Exempted from the Notification

The following economic concentrations, among others, are exempted from the mandatory notification requirement:

(i) the acquisition of companies in which the purchaser already holds more than 50% of the shares, provided that it does not entail a change in the nature of control;

(ii) the acquisition of bonds, debentures, non-voting shares or debt securities;

(iii) the acquisition of wound-up and liquidated companies that had no activities in Argentina during the preceding calendar year;

(iv) gratuitous transfers of goods to the Argentine state, provinces, municipalities or the City of Buenos Aires;

(v) the transfer of goods among mandatory heirs, by acts among living persons or due to death;

(vi) the acquisition of only one company by only one foreign company that has no assets (except those used for residential purposes) or shares in other companies in Argentina. If the foreign company is active in the country by means of exports, the "first landing" exception could still be invoked if such exports were not substantial, regular and predictable during the last 36 months, but a case by case analysis should be carried out; and

(vii) the acquisition of companies, if the total local assets of the acquired company and the local amount of the transaction each do not exceed 20,000,000 Adjustable Units (equivalent to ARS 812,200,000) provided, however, that the exemption will not apply if any of the involved companies were involved in economic concentrations in the same relevant market for an aggregate of 20,000,000 Adjustable Units in the last 12 months or 60,000,000 Adjustable Units (equivalent to ARS 2,436,600,000) in the last 36 months.

7.10 Procedure

The Argentine Competition Authority is entitled to initiate investigations ex officio or at the request of any party or entity. The Argentine Competition Authority may, as a preventive measure at any stage of the process, (i) impose certain conditions and (ii) issue cease and desist orders. Please note that the Argentine Competition Authority's decisions for imposing sanctions, cease and desist orders, and the rejection or conditioning of acts regarding economic concentrations are subject to judicial review

7.11 Penalties and Sanctions

The Argentine Competition Authority may apply fines and request a judicial order to liquidate or require the spin-off of companies infringing the provisions of the Antitrust Law. The directors, managers, administrators, internal auditors and members of the supervisory committee, attorneys-in-fact and legal representatives of such entities may be held jointly and severally liable with the infringing entity.

Regarding anticompetitive behaviors, the Antitrust Law establishes that the infringing parties may be fined with the higher amount resulting from the application of any of the following two methods:

(i) fines up to 30% of the volume of business of the last fiscal year, associated to the products and/or services involved in the perpetuation of the anticompetitive conduct, multiplied by the years of duration of the conduct, which, in turn, should not exceed 30% of the consolidated volume of business generated in Argentina in the last fiscal year of the group to which the offender belongs; or

(ii) up to double the economic benefit reported by the anticompetitive conduct.

If the calculation of the fine is not viable under any of the methods described above, the fine could be of up to 200,000,000 Adjustable Units, equivalent to ARS 8,122,000,000.

In addition, Section 55, Sub-section e) of the Antitrust Law establishes the possibility of being suspended in the National Registry of Suppliers of the State for a maximum of 5 years. For those involved in bid rigging activities, the suspension may be of up to 8 years.

On a final note, the new Antitrust Law eliminates the solve *et repete* system for the payment of fines. As such, these will now only have to be paid upon confirmation by the Courts.

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Labor and Immigration Laws

Villa La Angostura, Neuquén

8.1 Labor Laws

Employer-employee relationships in Argentina are governed for the most part by the Argentine Constitution and international treaties and conventions, as well as Labor Contract Law No. 20,744, as subsequently amended (the "LCL"), collective bargaining agreements and the individual terms of labor contracts between employers and their employees.

8.2 Salaries

Salaries may be paid on a monthly, daily or hourly basis, depending on the type of work performed by the employee. There is a mandatory monthly minimum wage. The only exceptions to this rule are wages paid to interns (non-employment relationship) and part-time workers, who may be paid less than the minimum wage. For full-time workers, the minimum wage effective as from October 2019 is ARS 16,875 and for daily workers, the hourly minimum wage effective as from October 2019 is ARS 84.37. Both minimum wages increased as described in the following chart:

Date as from which increase is effective	Minimum wage for full-time workers	Minimum wage for daily workers
March 1, 2019	ARS 11,900	ARS 59.5
June 1, 2019	ARS 12,500	ARS 62.5
August 1, 2019	ARS 14,125	ARS 70.62
September 1, 2019	ARS 15,625	ARS 78.12
October 1, 2019	ARS 16,875	ARS 84.37

Additionally, by law, employees are entitled to a "13th salary" (*aguinaldo*), which is paid in two installments each year, on June 30 and December 18. Each installment is equivalent to 50% of the highest monthly wage earned in the previous six-month period. Typically, the standard work week is 40 to 48 hours, or an average of eight working hours per day. Workers earn overtime pay for work done in excess of the standard working week; however, if the daily cap of 9 hours is exceeded, overtime must be paid. If, on the other hand, the daily cap of 8 hours is exceeded by only 1 hour, this excess does not have to be paid as overtime. Overtime payment rates are 50% more than the base rate on normal workdays, and double the base rate on Saturday afternoons, Sundays and official holidays. Directors and managers, however, are exempt from workday limitations, meaning they are not entitled to overtime pay.

8.3 Contributions and Withholdings

Based on Argentine law, employers and employees have certain obligations to make social security contributions for family allowances, medical services, and pension and unemployment benefits. On top of this, union contributions of 1% to 2.5% may be withheld from employees' salaries in accordance with many collective bargaining agreements. The mandatory social security withholdings and contributions are calculated as a percentage of the employee's remuneration. The employee's contribution is based on a calculation for which there is a cap that amounted to ARS 159,028.80 as of December 2019. The cap is updated every six months. The employer's social security contributions, on the other hand, have no cap in their calculation basis.

Under certain circumstances, foreign employees working in Argentina may be exempt from making pension fund contributions.

Law 27,541, published in the Official Gazette on December 23, 2019, amended the percentage rates of employer social security contributions as follows:

- 20.40% for employers from the private sector framed in the "Services" or "Commerce" categories according to the Resolution No. 220/19 of the Secretary of Entrepreneurs and Small and Medium Sized Companies, as long as their total annual sales exceed the limits required to be framed as a medium company;
- 18% for the remaining private sector employers and public sector entities and organizations.Furthermore, the employer is also required to withhold amounts due in respect of income tax payable by the employee.

In addition, new base amounts to calculate employer contributions are established:

- ARS 7,003.68: as general application
- ARS 17,509.20: only applicable for textile employers, primary agricultural and industrial sector, and health-related services.

For part-time contracts, these amounts will apply on a proportional basis.

The regulation also allows, for the calculation of contributions, to deduct an amount equivalent to 50% of the previous amounts, from the tax base of the Supplementary Annual Salary (13th salary).

- Employers with a payroll of up to 25 employees may deduct an additional amount of $ 10,000.

The employer is also required to withhold income tax amounts due by the employee.

8.4 Vacations and Leaves of Absence

Employees are entitled to annual paid holidays, which vary from 14 to 35 calendar days each year depending on the number of years they have worked. In addition, employees are entitled to short leaves of absence in the event of marriage, birth, the death of a close relative, and high school or university exams.

Female employees have additional rights, including maternity leave of 45 days before and 45 days after childbirth. During maternity leave, employees are entitled to certain family allowances.

If employees cannot work due to non-work-related accidents or illness, they are entitled to their full salaries for a period of three to twelve months, depending on the number of years they have worked for the company and whether they have a dependent family.

8.5 Trial-Period Hiring

Employment contracts may be for an indefinite period or a fixed term. In indefinite period contracts, the first three months are a trial period. During the trial period, either party may terminate the labor relationship at any time without the employer having to pay severance. However, the terminating party is obliged to give 15-days' notice.

8.6 Termination of Labor Contracts

An employee may resign at any time and must give the employer 15-days' notice.

In indefinite term employment contracts, the employer may dismiss an employee at any time with notice of: (a) 15 days if terminated during the trial period, (b) one month if the period of service is longer than the trial period but less than five years, or (c) two months if the period of service is longer than five years. The notice can be substituted with a salary payment equivalent to the salary otherwise owed for the notice period. If no prior notice is given and the dismissal takes place on a day other than the last day of the month, the employee will also collect an amount equal to the salary corresponding to the remaining days of the month of dismissal.

The employer is also required to pay severance to the employee based on their highest ordinary monthly salary during the previous year of employment or full term of service if shorter than one year. With certain limits resulting from statute and case law, the employer must pay the employee one month's salary for each year of employment or period worked in excess of three months. The severance pay cannot be lower than the ordinary highest monthly salary.

If an employee is dismissed for gross misconduct, no severance is payed or prior notice is required. However, the employer must prove that gross misconduct occurred.

8.7 Work Risk Insurers

In 1995, Argentina established a system to reduce workplace risks and indemnify employees who get ill or injured at work. Generally, the provisions of Law No. 24,557 (the "LRT" after its acronym in Spanish) provide protections for all workers employed in the private sector, as well as certain other employees. Employers of workers included within the scope of the LRT must either self-insure against the obligations imposed by the LRT or must be insured by a Work Risk Insurer (an "ART" after its acronym in Spanish). At present, very few companies provide their workers with self-insurance. When an ART provides coverage, it must compensate the injured worker in accordance with the requirements of the LRT, and it must also provide medical and pharmaceutical attention, prosthesis and orthopedics, rehabilitation, occupational re-classification, and funeral service benefits.

The ART is financed with monthly payments from the employers of insured persons.

On October 26, 2012, Law No. 26,773 introduced an amendment to the LRT, which provides that the employer may also be held liable for the damages suffered by the employee while performing duties. The employee has the option to file a claim against the ART, seeking compensation within the LRT system, or against the employer for the civil responsibility of a work-related accident or illness.

Moreover, Law No. 27,348 introduced additional modifications to the LRT, which are based on three main aspects: (i) the mandatory pre-trial stage of medical commissions for work-related accidents or sick leave; (ii) the modification of territorial jurisdiction, with the purpose of avoiding lawsuits mainly in jurisdictions outside the workplace or the worker's domicile; and (iii) the establishment of a new scheme of expert fees with fixed amounts.

8.8 Temporary Measures

The government which assumed on December 10, 2019 took two measures that may have an impact on employment relationships:

Decree 34/2019, which declares the public emergency in occupational matters. It provides that in cases of dismissal without cause during the period of validity of the decree, employers must pay the corresponding severance payment doubled. The purpose of this regulation is to reduce dismissals and the rising unemployment rate.

Decree 14/2020, which provides a salary increase for all private sector workers as of January 2020, in order to improve the purchasing power of employees. A similar measure was adopted for workers in the public sector.

In addition, as a result of the health emergency related to COVID-19, on March 31, 2020, the Government issued Decree 329/2020, that prohibits for a 60 day term (a) dismissing employees without cause; and (b) suspending employees due to lack of work or force majeure (except if a certain payment is made and approval from the Labor Ministry obtained, according to section 223 bis of the LCL). The prohibition will be in force May 31, 2020, although this period could be extended by the Government.).

8.9 Immigration Controls

8.9.1 Foreign Workers

Any foreign person wishing to reside and work in Argentina must obtain a residence permit from the Argentine Immigration Board. Two categories of residents exist: (i) permanent residents and (ii) temporary residents.

In principle, a permit for either permanent or temporary residence must be obtained by filing an application at the nearest Argentine consulate in the country of origin or by entering the country as a tourist and requesting a change in immigration status. If the applicant prefers to apply for a permanent or temporary residence permit at the consulate, the request must be preceded by the issuance of an entry permit approved by the Argentine Immigration Board. The request for this permit may be filed with the Argentine Immigration Board through a third party on behalf of the applicant.

8.9.2 Permanent Residency

A permanent residence permit grants a foreigner the right to reside and work in Argentina indefinitely. A non-Argentine citizen may apply for permanent residency if he or she is related to an Argentine citizen (wife or husband, son or daughter, or parent). A non-Argentine citizen may also obtain permanent residency in Argentina provided that he or she has resided in the country for the last three years or more under a temporary residence permit. Generally, birth and marriage or cohabitation certificates, plus a certificate stating that the applicant has no criminal records, are required.

8.9.3 Temporary Residency

A permit for temporary residency is granted to foreigners wishing to enter the country for a limited period of time. There are different categories for which foreigners may apply. To apply for a temporary residence permit to work in the country, the applicant and his or her family must provide personal data and documents. In addition, the applicant has to be sponsored by a local company, for which the applicant will work. The company must be registered to sponsor foreign applicants at the Registry for the Sponsorship of Foreign Expatriates (the "RENURE" after its acronym in Spanish). To obtain registration with the RENURE, the company must file certain documents and corporate information. The applicant should also file personal documents such as birth and marriage certificates and a certificate showing that he or she has no criminal record.

The authorization may be granted for a period of up to one year and may be renewed for an identical period.

8.9.4 Mercosur Nationals

The procedure for obtaining a temporary or permanent residence permit in Argentina varies for citizens born or naturalized in Brazil, Bolivia, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay or Venezuela. Citizens of these countries and citizens naturalized by Mercosur countries may apply for an initial two-year temporary or permanent residence permit without the need to be sponsored by a local entity.

Environmental Laws

Perito Moreno Glacier, Santa Cruz

9.1 Introduction

The 1994 amendment of the Argentine Constitution and subsequent federal and provincial legislation have strengthened the legal framework for dealing with damages to the environment. Government and legislative agencies have become more vigilant in enforcing environmental laws and regulations, increasing the number of sanctions for violations.

Under the amended Sections 41 and 43 of the Argentine Constitution, all Argentine residents have the right to an undamaged environment and the duty to protect such environment. The primary obligation of any person held liable for environmental damage is to rectify the damage in line with the applicable law.

In accordance with the Argentine Constitution, the Argentine Government established the minimum standards for environmental protection. The provinces can establish specific standards and implement regulations, but their standards cannot be lower than those at the federal level.

Below are the main federal laws for environmental protection.

9.2 Environmental Policy Law

Law No. 25,675 (the "Environmental Policy Law") provides the minimum standards for an adequate and sustainable management of the environment, the preservation and protection of different species, and sustainable development. This law sets the objectives of the national environmental policy and creates a federal environmental system to coordinate the environmental policies of the Argentine Government, the provinces and the City of Buenos Aires.

This law, which is applicable nationwide, is used for the interpretation and application of specific local legislation, whether by the provinces or by the City of Buenos Aires. Such legislation will be in effect as long as it does not oppose the principles and provisions contained in the Environmental Policy Law.

In this environmental law framework, one of the minimum standards establishes that any work or activity capable of significantly degrading the environment or its components, or which may adversely affect the quality of life, will be subject to an environmental impact evaluation prior to its execution or performance.

The Environmental Policy Law also requires that people or entities that perform environmentally risky activities must have insurance for environmental damages. This mandatory coverage was implemented mainly through several resolutions enacted by the federal environmental authority (currently, the Ministry of Environment and Sustainable Development).

When environmental damages have a collective impact, any affected person, the ombudsman, non-governmental environmental organizations and federal, provincial and municipal agencies are entitled to request that a court remedy any damages. Further, the Environmental Policy Law allows individuals to ask for court intervention to stop any activities causing collective environmental damage.

9.3 Industrial Waste

The integrated management of industrial and service industry waste is addressed in Law No. 25,612. It establishes the minimum standards for the management of industrial and service industry waste. The law unifies the management of waste generated in industrial processes, without making any distinctions between hazardous industrial waste (see paragraph 9.4. below) and waste not deemed hazardous.

This law sets the minimum environmental protection requirements for the integrated management (i.e., generation, handling, storage, transport and treatment or final disposal) of industrial and service industry waste generated anywhere in Argentina. The law has not yet been regulated.

9.4 Hazardous Waste

Hazardous Waste Law No. 24,051 regulates the production, handling, transport, treatment and disposal of hazardous waste generated in areas within the jurisdiction of the Argentine Government, or where the waste may affect more than one province (e.g., waste transported from one province to another).

The law created a national registry for individuals and companies responsible for the generation, transport and disposal of hazardous waste. Once registered, an environmental certificate is issued, which must be renewed annually. Generators of waste must pay a fee established by the law and calculated using a formula based on the danger or quantity of hazardous waste produced, among other relevant criteria.

The law imposes sanctions on those who infringe the law, which may include fines and closure of the offender's premises.

9.5 Air Pollution

Clean Air Law No. 20,284 (the "Clean Air Law") is applicable in the federal jurisdiction and in those provinces that have adopted its provisions. The Clean Air Law establishes general principles for the treatment of sources capable of contaminating the atmosphere. Enforcement of this law is handled by the respective national, provincial or local health authorities. Its implementing rules and standards have yet to be adopted, so the law has had little practical effect.

However, certain jurisdictions have enacted their own air quality regulations, which are currently in force.

9.6 Water Protection

No specific federal legislation on liquid effluents has been enacted. However, in the provinces, the City of Buenos Aires, certain municipalities and other areas governed by special regimes (e.g., ACUMAR, the agency overseeing the cleanup of the Matanza-Riachuelo Basin), there are regulations prohibiting industrial establishments from launching activities or expanding existing facilities, even on a provisional basis, if such action results in the discharge of waste into watercourses or if the facilities do not satisfy the requirements provided in the regulations.

In November 2002, the Argentine Congress passed Law No. 25,688 for the environmental management of water. It sets minimum environmental standards for the preservation of water and its uses. However, few specific standards have been established in the law.

Additionally, the law requires that a permit must be obtained from the competent authority for the use of surface and underground water.

It also authorizes the relevant federal enforcement agency to determine: (i) the maximum limits for the contamination and protection of aquifers; (ii) instructions for the refill and protection of aquifers; and (iii) the fixing of parameters and environmental standards for water quality.

9.7 Polychlorinated Biphenyls

Another law providing minimum environmental standards is Law No. 25,670, approved in October 2002. It regulates the management and elimination of polychlorinated biphenyls ("PCBs"). PCBs and equipment containing PCBs have been barred from entering Argentina, along with their installation.

With respect to PCBs already existing in the country, the law requires the holders and those who market and manufacture PCBs to register with a national registry created for these purposes. Such registration must be updated biannually.

Based on this law, those who do activities or provide services requiring the use of PCBs must contract an insurance policy to guarantee the remediation of possible environmental and health damages caused by such activities.

9.8 Native Woods Protection Law

In 2007 the Argentine Congress enacted Native Woods Protection Law No. 26,331 (the "Native Woods Protection Law") which sets the minimum standards for the protection of native woods under federal jurisdiction. Almost all provinces have since enacted their own legislation with equal or higher standards than at the federal level.

Based on the Native Woods Protection Law, native woods are classified as red, yellow or green. Generally, clearing native woods in the red and yellow categories is forbidden, but those in the green category can be forested sustainably if in compliance with soil change and movement standards that must be approved by each province. Further, certain native woods in the yellow category can be classified as green category.

Every forestry project for clearing trees or for the sustainable use of native woods must be approved by the appropriate provincial agencies, which involves getting approval of the environmental impact assessment and holding a public hearing.

9.9 Law for the Protection of Glaciers

Law for the Protection of Glaciers No. 26,639 was enacted in September 2010. It provides the minimum standards for the protection of glaciers and periglacial environments to preserve them as water resources for human consumption and agriculture, and for protecting biodiversity. It also protects areas for scientific and tourism purposes.

This law establishes that glaciers are public assets. It also created the National Glacier Inventory for identifying all glaciers and periglacial areas for suitable protection and control. Decree No. 207/2011 regulates this inventory.

Based on this law, activities in glaciers and periglacial environments that may affect their natural condition or function as a water resource, or may cause destruction, transfer or interfere with its advance, are prohibited. Such prohibited actions include: a) the liberation, dispersion and disposal of pollutant substances or elements, chemical products, or any type of waste; b) the construction of architectural and infrastructural works, with the exception of those necessary for scientific research and risk prevention; c) mining exploration and exploitation, and oil and gas activities; and d) the establishment of industries or the development of industrial works or activities.

All activities conducted on glaciers and in periglacial areas are subject to the approval of an environmental impact assessment and a strategic environmental assessment. The latter is defined by Decree No. 207/2011.

The law imposes sanctions on infringers, which may include fines, permit suspensions and the stopping of activities.

On June 11, 2018 the first glacier inventory was published (Resolution No. 358/2018 issued by the Ministry of Environment and Sustainable Development).

9.10 Environmental Protection against Fires

Law No. 26,562 seeks to set minimum environmental protection standards related to burning activities, in order to prevent fires, environmental damage and risks to public health and safety.

The Law prohibits any burning activity that does not have the proper authorization issued by the competent local authority.

Moreover, Law No. 26,815 sets the minimum standards for protecting the environment in the event of forest and rural fires.

The law creates the Federal System for the Handling of Fires for protecting the environment from fire damage and for implementing mechanisms so the state can effectively participate in preventing and fighting fires. It also created another agency, the National Fire Management Service, which is in charge of developing and implementing a national fire alert system.

9.11 Access to Environmental Information

Law No. 25,831 guarantees free and public access to environmental information, defined as any information related to the environment, natural or cultural resources and sustainable development. The Argentine Government, public utility companies and independent governmental bodies holding environmental information are required to provide such information to any person who requests it within 30 business days of making a formal request.

The requested information may be denied in cases expressly mentioned in the law (e.g., when such information could affect trade or industrial secrets or intellectual property rights).

9.12 Household Waste

Law No. 25,916 regulates the minimum environmental protection standards for the management of household waste from residential, urban, commercial, medical care, health, industrial and institutional sources. Specifically, it is designed to create a proper and rational system for the management of household waste.

9.13 Empty Containers of Phytosanitary Products

Law No. 27,279, published in October 2016, created minimum environmental protection standards for the management of empty containers of phytosanitary products. The law provides that these containers require a specific management and determines that they must be managed only through the channels established by the Integral Management System of Empty Containers of Phytosanitary Products, once approved by the competent authority.

The law forbids: i) any action involving the abandonment, dumping, burning or burying of empty containers of phytosanitary products; and ii) the commercialization or delivery of these products to individuals or legal entities outside the authorized system. The use of the material recovered to make any type of products that, due to its use or nature, may involve risks to human or animal health, or have negative effects on the environment, is also prohibited.

This law has been regulated by Decree No. 134/2018.

9.14 Climate Change Adaptation and Mitigation

Law No. 27,520, enacted in December 2019, sets the Minimum Environmental Standards on Global Climate Change Adaptation and Mitigation. The law ratified the Climate Change National Cabinet –created in 2016 by the Argentine Executive – and entrusted it with the implementation of the National Mitigation and Adaptation Plan ("NMAP") and of all climate change public policies adopted pursuant to said law.

NMAP's goals include the development of climate change adaptation and mitigation public policies and evaluation tools, and the preparation of the administration and the general public for future climate changes. The NMAP must be comprised of: (i) the analysis and projection of climate variables; (ii) methods and tools to assess impact on social and natural systems and their adaptive capacity; (iii) identification of critical areas and appropriate adaptation measures; (iv) identification, measurement and quantification of GHG emissions and identification of responsible sectors; (v) development of mitigation measures to reduce GHG emissions; (vi) guidelines to be incorporated in Environmental Impact Assessment procedures; (vii) development of different scenarios on vulnerability and socioeconomic and environmental trends as a basis for considering future climate risks; (viii) elaboration of baselines to monitor and evaluate measures and policies to be adopted; (ix) improvement of hydro-meteorological observation and monitoring systems; and (x) promotion of new environmental awareness to reduce harmful effects of climate change and increase adaptation capacity.

Through Resolution No. 447/2019 the former State Secretariat of Environment and Sustainable Development elaborated: (i) the first NMAP, aimed at advancing in the fulfillment of the objectives assumed by Argentina in the Paris Agreement; and (ii) the Climate Change Action Plans in Energy, Transport, Agriculture, Industry, Health, Infrastructure and Land sectors.

9.15 Environmental Tort Law Rules

Law No. 25,675 provides that those who cause environmental damages are strictly liable for the remediation of such damages (Section 28). "Environmental damage" is defined as any relevant alteration that negatively affects the environment, natural resources, the ecosystems' balance, or collective goods or values (Section 27).

In order for a party to exclude its liability for environmental damages, it must demonstrate that it adopted all means aimed at avoiding the damages and, provided that its concurrent negligence did not exist, that the damages were caused exclusively by the negligence of the victim or of a third party for which the first party is not responsible (Section 29).

Moreover, with respect to collective environmental damages, Section 31 of Law No. 25,675 provides that in case said damages are caused by two or more persons or in case it cannot be exactly demonstrated the damage produced by each person, then all of them are jointly and severally liable. If damages are caused by legal entities (i.e., corporations), the authorities and professionals involved may be held liable in accordance with their intervention. In the case of collective environmental damages caused by legal entities, tort liability can be extended to the entity's managers, directors, statutory auditors and other officers who participate in the company's decision-making, depending on their level of participation. In the event of damages caused by several parties (e.g., several industries polluting the same river), joint liability may be assessed.

The Argentine Civil and Commercial Code (the "CCCN" after its acronym in Spanish) defines the right to an undamaged environment as a collective right and forbids the abusive exercise of individual rights affecting the environment.

Based on the CCCN, any injured person may seek damages from the owner or keeper of an asset or activity that produces environmental damage. Likewise, the transferor of an asset that has a hidden defect and later causes environmental damage may be liable after the transfer. The three-year general statute of limitations applicable to damage claims applies to environmental damages. However, case law has developed specific rules regarding how this period should be counted in the event of environmental claims.

The owner and the keeper of a dangerous object or activity that harms the environment may be excused from liability only in the case of force majeure, or when a third party or the victim has contributed to the damages.

Damages caused by or with dangerous objects or as a consequence of dangerous activities are subject to a strict liability regime. A person who carries out a dangerous activity or benefits from it may be held liable for the damages caused to the environment as a consequence of that activity.

The CCCN also provides for several general law principles, such as the good faith principle and the prohibition on abusive exercise of rights, when the environment or collective rights are affected. Others are the supremacy of general interests over individual ones and the establishment of the principle of damage prevention.

The CCCN also provides joint liability for damages caused by a person who is part of a group or by a dangerous activity performed by a group.

Lastly, Hazardous Waste Law No. 24,051 contains some provisions on tort liability related to hazardous waste management.

9.16 Criminal Liability

In Argentina, people who commit crimes against public health, such as poisoning or dangerously altering water, food or medicine to be used for public consumption, and selling products that are dangerous to health, without the necessary warnings, may be subject to fines, imprisonment or both. Some courts have used the provisions in the Criminal Code to sanction the discharge of substances hazardous to human health.

Hazardous Waste Law No. 24,051 contains criminal provisions applicable nationwide, regardless of the place where the waste was produced. Anyone who jeopardizes human health, or poisons, pollutes or contaminates soil, water, the atmosphere or the environment with hazardous waste, may be punished by fines and imprisonment.

9.17 Local and Multi-Jurisdictional Authorities – Increasing Controls

In addition to the environmental provisions in provincial constitutions, the provinces and the City of Buenos Aires have enacted specific regulations (e.g., laws, decrees, resolutions) addressing a wide spectrum of environmental matters, including environmental impact assessment proceedings, permission for the management of hazardous substances, wastes, gaseous emissions and liquid effluents, and for handling certain equipment. The provinces have also legislated on environmental aspects of certain industrial activities, including activities that are subject to federal jurisdiction (e.g., oil and gas, mining, power transmission, among others).

Along with the federal, provincial and municipal bodies involved in environmental matters, a number of multi-jurisdictional agencies have been created. One such agency is the ACUMAR (*Autoridad de Cuenca Matanza-Riachuelo*), which was formed by the Argentine Government, the Province of Buenos Aires and 14 municipalities to prevent and control industrial emissions in the area around the Matanza-Riachuelo River on the southern border of the City of Buenos Aires with the Province of Buenos Aires.

Additionally, certain provinces have set up inter-jurisdictional agencies for the environmental protection of rivers running through different provinces.

The Federal environmental authority (currently, the Ministry of Environment and Sustainable Development) has taken a more proactive approach in recent years towards the prevention and control of contaminating activities in its jurisdiction. Likewise, provincial agencies, especially those from the City of Buenos Aires, the Province of Buenos Aires and Patagonia, have increased their environmental controls.

9.18 Other Regulations

Specific federal, provincial and municipal environmental regulations exist for particular activities and industries, such as oil and gas, power generation, transmission and distribution, mining, food, medical waste disposal, agriculture and the transportation of radioactive material.

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Foreign / International Aspects

Iguazú Falls, Misiones

10.1 The Foreign Trade Regime

10.1.1 Mercosur

On March 26, 1991 Argentina, Brazil, Paraguay and Uruguay signed a treaty (the "Mercosur Treaty") to create a single market with a common external tariff. Full membership for Venezuela became effective on July 31, 2012. However, Venezuela is currently suspended in all its rights and obligations inherent to its status as a party to Mercosur. Mercosur has a population of approximately 295 million, living in an area of more than 15 million square kilometers.

The objectives of the Mercosur Treaty are:

(i) the free transit of capital goods, services, people and capital between member states by eliminating customs duties and lifting non-tariff restrictions on the transit of goods, among other measures;

(ii) the establishment of a common external tariff (*Tarifa Externa Común*, or the "TEC" after its acronym in Spanish) and the adoption of a common trade policy in relation to non-member states; and

(iii) the coordination of macroeconomic and sectoral policies between member states in relation to foreign trade, agriculture, industry, taxes, the monetary system, monetary exchange rates, capital investments, customs, services, transport and communications, as well as any other issues that may be agreed on to ensure free competition among member states.

While Mercosur has achieved a free-trade zone with respect to most products, some products considered sensitive, such as sugar, automobiles and capital assets, are still subject to tariffs. Such tariffs are being reduced each year, and new products are being added every year to the TEC.

On June 28, 2019 the Mercosur and the European Union reached an initial agreement that is part of a broader Association Agreement between the two regions, which will be subject to further revision and market access offers.

This initial agreement is the conclusion of over 20 years of negotiations and, for both parties, will be the largest trade agreement in place. In addition to reducing tariffs on most products, the agreement includes chapters on other disciplines that are key for granting market access to the parties, such as reduction of tariffs, Non-Automatic Licenses, Rules of Origin, Trade remedies, Technical Barriers to Trade, Public Procurement, Intellectual Property Rights and Dispute Settlement.

10.1.1.1 Additional Mercosur Agreements

Bolivia's amended protocol for becoming a member of Mercosur was signed by the Mercosur countries in 2015, but full membership has yet to be granted. Additionally, Chile, Colombia, Ecuador, Guyana, Peru and Suriname are associate members of the trade bloc.

10.1.2 Customs Regulations

Argentina and the other Mercosur member countries have adopted the international classification of goods and are members of the World Trade Organization (the "WTO"). Thus, WTO regulations on customs valuation, labeling, and fair-trade practices (e.g., anti-dumping actions, safeguard measures and countervailing duties) are applicable to Argentina.

Argentine customs regulations impose customs duties on most imported goods prior to entry into the country.

To clear customs, all imported goods are subject to the Import Monitoring System (the "SIMI" after its acronym in Spanish). The SIMI has been in force since December 2015, as amended from time to time, replacing the Prior Import Sworn Statement (the "DJAI" after its acronym in Spanish). Certain goods, such as food, chemicals and medicine may require additional authorizations by regulatory agencies to be imported.

Since December 2015, the Argentine Government has reinstated automatic and non-automatic import licenses (known as the "LAI" and the "LNA", respectively, after their acronyms in Spanish). The LNA applies to products including but not limited to textiles, footwear, toys, domestic appliances, motorbikes

and auto parts. On January 9, 2020 the Secretary of Industry, Knowledge Economy and External Commercial Management, introduced certain changes to the LAI and LNA import licenses regime, expanding the amount of tariff codes subject to non-automatic licensing. In general, there is no import duty on goods originating from a Mercosur member state.

In September 2018, the Argentine Government re-imposed, through Decree No. 793/18, as amended, issued by the Argentine Executive, duties on the export of goods.

Additionally, specific foreign exchange rules apply to the export of goods.

10.1.2.1 Import Monitoring System – SIMI

On January 8, 2018, The Argentine Tax Authority (the "AFIP" after its acronym in Spanish) together with the Secretariat of Trade published Regulation 4185-E in the Official Gazette.

Regulation 4185-E amended the SIMI and abrogated Regulation 3823 (that originally created the SIMI in 2015).

The SIMI created an obligation for importers (that are registered with the Special Customs Registry established by Resolution N° 2570/2009 as amended) to file certain information for final imports in the SIMI with the AFIP.

There are exemptions, but they are not economically relevant for most importers (e.g., samples, donations, imports by courier).

An approved SIMI is a prerequisite for applying for a non-automatic import license.

The SIMI process can be summarized as follows:

(i) The SIMI filing must be made through the MALVINA system (the "SIM" after its acronym in Spanish) and is regulated by the AFIP.

(ii) The information submitted in the SIMI is available to all agencies adhering to the SIMI so that them can make comments or objections within 10 days after the SIMI is registered. This term may be extended.

(iii) The importer will be able to proceed with the SIMI filing and start the import control process prior to the arrival of the goods. However, the SIMI will have to be approved (SALIDA status) to complete the import process.

(iv) To proceed with the approval of the SIMI, AFIP will also analyze:

a. The importer situation according the information available in the AFIP´s records; and

b. The financial and economic capacity of the importer regarding the import to be done.

(v) The importer must file for approval from the SIMI for all final imports unless the goods are exempt.

Once approved (SALIDA status), the SIMI declaration is valid for 90 calendar days from its approval. This term may be extended by submitting a request for extension at least 15 days before the original expiration date.

10.1.2.2 Automatic and Non-Automatic Import Licenses – LAI and LNA

In December 2015, the former Ministry of Production reinstated LAI and LNA. Generally, all products are subject to an automatic import license unless the regulation requires a non-automatic import license for such product. The LAI are processed together with the SIMI and do not require any additional filing.

Importers filing for an LNA must submit certain information (e.g., name and tax identification number) and the product (e.g., FOB value, type and quantity, commercial brand, model, country of origin and of shipping) through the MALVINA system.

If the product is subject to an LNA, importers must be registered before the General Registry of the former Ministry of Production and also complete an additional form, depending on the product to be imported. This LNA is also filed online in the SIMI and analyzed by the Secretary of Trade.

The Secretary of Trade analyzes the filing and either approves it or makes observations. If observations are made, the importer will receive a notice through the SIMI and will have to reply to such observations.

Once approved, the LNA will be valid for 90 calendar days.

10.1.3 GATT / WTO

On December 7, 1994, Argentina enacted Law No. 24,425, which incorporated the items agreed in the Uruguay Round of Multilateral Trade Negotiations and the Marrakesh Agreement, both of which were held under the sponsorship of the WTO.

Additionally, that law introduced into the Argentine legal system the agreements on anti-dumping, countervailing duties and safeguard measures, in accordance with Sections VI and XIX of the GATT Agreement 1994.

10.1.3.1 Anti-Dumping Legislation

Dumping occurs when a product is introduced into the Argentine market at a price (the “export price”) lower than its “comparable price.” For these purposes, a comparable price is the price at which the product is sold in the course of normal business transactions in the exporting country’s market. The comparison between the export and comparable prices must be made at the same stage in the distribution process, normally at the post-factory level.

The anti-dumping procedure is regulated by Decree No. 1393/2008. Procedures for products produced in countries that do not have a market economy are regulated by Decree No. 1219/2006.

The authority responsible for conducting trade remedy investigations is the Commission of International Trade (*Comisión Nacional de Comercio Exterior*, the “CNCE” after its acronym in Spanish), which has jurisdiction to:

(i) determine whether there is dumping/subsidies;

(ii) determine whether there is injury (or threat of injury) to the domestic industry and whether there is a causal relationship between dumping/subsidies and the injury;

(iii) define the investigated and related products; and

(iv) assess the representativeness of the domestic industry.

Anti-dumping duties may only be applied when dumping causes, or threatens to cause, material injury to a domestic industry, or material delay to the establishment of such industry. To impose anti-dumping duties, it is necessary to prove (i) the existence of dumping, (ii) injury (or threat of injury) to the domestic industry and (iii) the causal relationship between both. When such requisites are met, the Ministry of Productive Development decides whether or not to impose anti-dumping duties. The decision not to impose anti-dumping duties, even when the legal requisites are met, may be based on international policy considerations.

10.1.3.2 Safeguard Measures

Safeguard measures can be used by a WTO member country to provide the Argentine industry with a "protection period" to attain greater competitiveness in international markets through a readjustment process. Since safeguard measures are not directed at counteracting unfair trade practices from a specific country, they are applied to all imports of a particular product, regardless of the country of origin.

Generally, the safeguard procedure is regulated by Decree No. 1059/1996, as complemented by Regulation 381/2019. However, procedures for products from countries without a market economy are regulated by Decree No. 1859/2004.

The CNCE is also responsible for the safeguard procedures. To impose safeguard measures, it is necessary to prove the existence of a causal relationship between the increase of imports of the product under investigation and the injury or threat of injury to the domestic production of that product.

The application of such measures under the safeguard procedure is conditional on compliance with certain requirements.

10.2 International Treaties

According to Sections 31 and 75 subsection 22 of the Argentine Constitution, international treaties, once approved by the Argentine Congress and ratified by the government, take precedence over federal and provincial laws.

Argentina is party to many international treaties including several approved by the Hague Conference on Private International Law, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) and the United Nations Convention on Contracts for the International Sales of Goods of 1980.

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Dispute Resolution

Villa de Merlo, San Luis

11.1 Argentine Judicial System

Since Argentina has a federal system of government, the judicial system is divided into the Federal Judiciary and the local judiciary of each of the 23 provinces and the City of Buenos Aires.

The Argentine Supreme Court (the "CSJN" after its acronym in Spanish) is the highest court of the Argentine judicial system. In principle, the intervention of the CSJN is reserved for matters in which it has original jurisdiction pursuant to the Argentine Constitution, such as those involving foreign ambassadors, ministers and consuls, and disputes between provinces, or exceptional federal cases in which it exercises ordinary or special appellate jurisdiction.

While federal courts have jurisdiction over disputes based on federal matters referred to by the Argentine Legislative branch and the Argentine Constitution, provincial courts deal either with cases based on local laws or with those based on non-federal laws.

Within the City of Buenos Aires, there are federal courts and others known as national courts. Federal courts are organized into lower courts and courts of appeals for each subject matter (e.g., civil, commercial, administrative and criminal law). National courts resolve non-federal legal disputes. Along with these, there are courts in the City of Buenos Aires that deal exclusively with local legal matters.

The organization and activity of the judicial courts are governed by the procedural laws enacted by the legislative power of each province. Procedural rules for the federal and national courts located in the City of Buenos Aires (and for the federal courts located in the provinces) are enacted by the Argentine Congress.

11.2 Choice of Law and Jurisdiction

11.2.1 Choice of Law

As a general rule, Argentine law allows parties to an international cross-border contract to select the laws that will govern the agreement, except in the case of consumer contracts.

The parties are free to choose different laws to govern different aspects within a particular contract (a process known as *dépeçage*) or even create the rules that will govern their agreement. As part of the latter, the parties may agree on the application of the principles of international commercial law, such as the UNIDROIT Principles for International Commercial Contracts.

The choice of foreign law will only be valid to the extent that it is not agreed on to evade the application of the mandatory rules contained in the laws that would apply in the absence of a choice-of-law provision. To that extent, the Argentine Civil and Commercial Code (the "CCCN" after its acronym in Spanish) requires that the law selected by the parties does not contravene Argentine public policy (*orden público*) and internationally mandatory rules of those States that may have a strong connection with the case.

If no choice-of-law provisions are made or no international treaty applies, Argentine law establishes that contracts are governed by the laws of the place of their performance. If such a place cannot be determined, contracts are governed by the laws of the place where they were executed.

Rights associated with real estate, such as in rem rights, the ability to acquire real estate and the formal requirements with regard to legal acts connected with real estate are all governed exclusively by the laws of the place where the real estate is located or registered. The same principles apply for movable property permanently located in Argentina.

The CCCN also contains specific choice-of-law rules for securities, inheritance, family affairs, legal acts and consumer relations.

11.2.2 Choice of Jurisdiction

Argentine law allows the parties to an international cross-border contract to choose a jurisdiction other than Argentina for the settlement of any disputes arising out of their relationship when the dispute relates to pecuniary rights, even when it will be handled by a foreign court or an arbitral tribunal.

In the absence of a forum-selection clause by the parties or the application of an international treaty, the plaintiff may choose to initiate its claim before (i) the courts of the domicile or residence of the defendant, (ii) the courts of the place of performance of any of the obligations under the agreement, or (iii) the courts where the agency, branch or representative office of the defendant is located.

Argentine courts have exclusive jurisdiction to hear all insolvency proceedings relating to debtors domiciled in Argentina or whose principal place of business is Argentina, as well as disputes involving property located in Argentina and the registration of trademarks and patents. With respect to debtors domiciled abroad, local courts have jurisdiction only to the extent that the debtor has assets in Argentina, in which case insolvency proceedings will only cover such assets. Moreover, local courts also have jurisdiction if the debtor's principal place of business is in Argentina.

The CCCN has incorporated specific jurisdiction rules related to marriage, adoption, paternal liability, inheritance, legal formalities, agreements, consumer relations, civil liability, credit instruments, real estate and statute of limitations. It has also legislated on international lis pendens, international cooperation, and procedural assistance between foreign and local courts.

The CCCN also empowers Argentine courts to issue provisional measures and injunctions in certain cross-border cases.

The Argentine Constitution guarantees non-Argentine citizens the same rights as Argentine citizens, including unlimited access to Argentine courts for the resolution of legal disputes. The CCCN expressly grants equal procedural treatment for foreign nationals who litigate in Argentina.

11.3 Alternative Dispute Resolution

The Argentine legal system contemplates both judicial and non-judicial dispute resolution methods, such as mediation and arbitration.

11.3.1 Mediation

Within the City of Buenos Aires, parties have been required since 1996 to attend compulsory mediation proceedings prior to litigating before the courts. The purpose of the mediation is to resolve disputes out of court through direct communication between the parties, assisted by a mediator. Several provincial jurisdictions have also established this mechanism as mandatory.

There are certain proceedings not subject to the compulsory prior-mediation requirements, such as insolvency and bankruptcy proceedings, provisional measures or proceedings on family matters.

Mediation may take place before publicly or privately appointed mediators. One or more hearings may be held, and the parties are required to attend personally. Mediators are not empowered to hand down a decision but to prompt the parties to reach an amicable and mutually beneficial settlement.

If a settlement is reached at the mediation, the settlement agreement will have the same binding force as that of a judgment. If a settlement cannot be reached, the mediator will formally close the mediation proceedings and the claimant may then pursue its case before the courts.

Confidentiality is one of the guiding principles of the mediation process.

11.3.2. Arbitration

Argentine legislation permits the parties to an agreement to choose arbitration as the dispute resolution method if a dispute arises in connection with their contractual relationship.

Arbitration legislation in Argentina contains separate regulations for domestic and international arbitrations.

Domestic arbitrations

Domestic arbitration in Argentina is regulated by the existing local procedural codes – the Argentine Civil and Commercial Procedural Code (the "CPCCN" after its acronym in Spanish), in the City of Buenos Aires and the federal jurisdiction of the rest of the country – and by the CCCN in force since August 2015.

Sections 1649 to 1665 of the CCCN introduced significant federal regulations on arbitration that refers to the arbitration contract. Before August 2015, arbitration in Argentina was only legislated by the local procedural codes of each province and by the CPCCN.

Based on the CCCN, an arbitration agreement exists when the parties decide to submit all or some of the disputes that have arisen or could arise between them in connection with their legal relationship, contractual or non-contractual, in which public policy is not compromised, to the decision of arbitrators. However, the agreement to arbitrate must be in writing.

In principle, all disputes concerning matters of economic content and capable of a private settlement may be resolved by means of arbitration when the parties have agreed so. However, the following matters of dispute are considered excluded from any arbitration agreement and may not be resolved through arbitration:

(i) the civil status or capacity of persons;

(ii) family affairs;

(iii) users and consumers;

(iv) standard form contracts;

(v) labor law; and

(vi) those in which the Federal State or local states are parties.

Moreover, the CCCN provides that the rules contained therein related to the arbitration contract are not applicable to disputes to which the national or local States are a party.

The arbitration chapter of the CCCN was inspired by the UNCITRAL Model Law, and it includes many of its well-known arbitration standards, such as the principles of autonomy and separability of the arbitral agreement and of competence-competence.

Among its innovations, the CCCN empowers arbitrators to grant interim measures, unless otherwise agreed.

Both *de jure* and *ex aequo et bono* or amiable composition arbitrations are admitted. Argentine law allows the parties to agree on the procedural rules for the arbitration, whether these are ad hoc rules drafted by the parties or rules provided by an arbitral institution.

The CCCN allows arbitral awards to be reviewed before state courts on the grounds of nullity. Additionally, it has introduced an ambiguous provision stating that the parties may not waive the right to challenge final awards that would be contrary to the legal system, though case law has interpreted that this provision does not expand the grounds for reviewing arbitral awards.

Argentina is party to several international conventions for the resolution of disputes through arbitration and the enforcement of arbitral awards, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the 1975 Inter-American Convention on International Commercial Arbitration.

For local disputes, the institutions most frequently used are the Arbitral Tribunal of the Buenos Aires Stock Exchange (rules in effect as of April 16, 1993; only available in Spanish) and the *Centro Empresarial de Mediación y Arbitraje Asociación Civil* (which refers to the UNCITRAL Arbitration Rules).

International arbitrations

On July 4, 2018, Law No. 24,779 on International Commercial Arbitration (the "LACI" after its acronym in Spanish) was sanctioned, creating a new legal framework for the resolution of international commercial conflicts in Argentina.

The LACI is essentially based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration as amended in 2006, with some significant modifications.

In accordance with its Sections 1 through 3, the scope of application of the LACI is limited to those international commercial arbitrations whose arbitral seat is located within the territory of the Argentine Republic. In this way, domestic arbitration will continue to be governed by local procedural rules and the provisions of the CCCN that regulate the arbitration contract.

The LACI establishes that arbitration will be considered "international" if:

(i) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(ii) the place of arbitration or any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is more closely connected, are outside the State in which the parties are located.

These provisions on the scope of application of the LACI provide a substantial difference in the text of the UNCITRAL Model Law that allows assigning an international status to arbitration if "the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country".

Likewise, any legal relationship, whether contractual or not, that is private or predominantly governed by Argentine private law must be deemed commercial; the interpretation is broad and in case of doubt, it must be judged that it is a commercial relationship.

The main arbitral institutions for cross-border disputes in Argentina are the International Chamber of Commerce (ICC) and the International Centre for Dispute Resolution of the American Arbitration Association.

Among other aspects, the LACI regulates the formal requirements and autonomy of arbitration agreements; the constitution and jurisdiction of the arbitral tribunal; the issuance of interim measures and preliminary orders; the course of the proceedings in all its stages; the issuance of the arbitration award; the correction, interpretation and judicial review of the award; and the applicable provisions to the recognition and enforcement of the award.

Finally, the International Commercial Arbitration Law also provides for the repeal of Section 519 bis of the CPCCN, which used to regulate the local execution of awards pronounced by foreign arbitral tribunals.

11.4 Enforcement of Foreign Judgments

If an international treaty for the enforcement of foreign judgments or arbitral awards exists between a foreign State and Argentina, the rules of such treaty will prevail. In the absence of such a treaty, the corresponding procedural code will apply. The CPCCN will be applicable if the defendant is domiciled in the

City of Buenos Aires or if the matter at issue will be debated before a federal court. Provincial procedure rules will be applicable when the matter at issue is to be debated before a provincial court. Unless otherwise stated, this analysis of the recognition of foreign judgments concerns federal procedure rules (i.e., the CPCCN), which are, in principle, applicable when a foreigner is involved.

11.4.1. Requirements

Subject to certain requirements in Section 517 of the CPCC, Argentine courts will enforce foreign judgments to resolve disputes and determine the rights and obligations of the parties to an agreement. The requirements that a foreign judgment must meet in order to be recognized in Argentina without further discussion of its merits are the following:

(i) The judgment must have been issued by a court considered competent by Argentine conflict of laws principles related to jurisdiction and must have been final in the jurisdiction where it was rendered and resulted from a personal action or an in rem action concerning movable assets. If the judgment resulted from an in rem action, the disputed personal property must have been transferred to Argentina during or after the prosecution of the foreign action.

(ii) The defendant against whom enforcement of the judgment is sought must have been duly served with a summons and, in accordance with due process of law, given an opportunity to defend itself against the foreign action.

(iii) The judgment must have been valid in the jurisdiction where it was rendered, and its authenticity must be established in accordance with the requirements of Argentine law.

(iv) The judgment must not violate any principles of public policy of Argentine law.

(v) The judgment must not be in conflict with a prior or simultaneous judgment of an Argentine court.

(vi) Reciprocity is not required for an Argentine court to recognize a foreign judgment.

Argentine courts do not automatically acknowledge a foreign court's original jurisdiction over the matter. As indicated in a) above, the competency of the jurisdiction of the foreign court that rendered the judgment is analyzed based on the Argentine rules of jurisdiction.

11.4.2 Procedures Relating to Enforcement

To enforce a foreign judgment in Argentina, a notarized copy of the decision must be filed with the Argentine court and the petitioner must file a statement evidencing that each of the conditions required by law has been fulfilled. In addition, all documents, originals or notarized copies, submitted to the court must be authenticated by the Argentine consulate with jurisdiction over the country where the documents were issued. If the relevant country has ratified the 1961 Hague Convention on the Abolition of Legalization of Documents, then authentication by the Argentine consulate may be substituted with the Apostille made available by the Hague Convention. All documents not in Spanish must be translated into Spanish by a translator registered in Argentina in order to be admitted by a local court.

The amounts expressed in foreign judgments must be converted to Argentine currency. A court tax must be paid by the party seeking enforcement, and the costs and expenses will be charged to the defeated party in the proceedings.

11.4.3 Immunity

Certain assets are unavailable to satisfy judgments obtained or determined to be enforceable in Argentina.

11.4.4 Enforcement of Foreign Arbitral Awards

The enforcement of foreign arbitral awards is currently regulated in Section 104 of the LACI, which repealed Section 519 bis of the CPCCN which used to regulate this matter. The LACI follows the system for the recognition and enforcement of foreign awards shared by the UNCITRAL Law and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Argentina is party with reservations over reciprocity and commercial disputes.

Other relevant international treaties on this matter that Argentina has also acceded to are the 1975 Inter-American Convention on International Commercial Arbitration and the 1988 Mercosur International Commercial Arbitration Agreement.

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Security Interests

Mount Fitz Roy, Santa Cruz

12.1 General

Under Argentine law, security interests may be created through mortgages, pledges (including registered and floating pledges), security assignments and trusts. Security may be taken over a wide variety of properties, such as personal and real property, securities, trademarks, shares, cash and receivables. However, certain assets subject to immunity may not be used as security interests.

12.2 Mortgages

Under Argentine law, a mortgage may be established over real estate, ships and aircraft. A mortgage will generally secure the principal amount (even if adjusted), accrued interest, and other related expenses owed by the debtor to the creditor. To satisfy the "specialty or singularity" principle established by the Argentine Civil and Commercial Code (the "CCCN" after its acronym in Spanish), the secured obligation must be properly identified. The maximum principal of the secured obligation must be determined in monetary terms. Conditional, future or undetermined obligations can be secured, provided that a maximum amount of the guaranty is determined when the mortgage is created and that the term of the guaranty does not exceed 10 years. All mortgages must be registered in the relevant registry to become effective *vis-à-vis* third parties. Mortgaged property may remain in the possession of the mortgagor (i.e., its owner).

12.2.1 Mortgages over Real Estate

Mortgages over real estate may only be created by a notarial deed signed before a notary public. The mortgage deed then must be filed for registration with the Public Real Estate Registry of the jurisdiction where the property is located. The mortgage is effective vis-à-vis third parties only once it is registered in such relevant registry.

12.2.1.1 Priorities

Under Argentine law, mortgages grant the registered mortgagee a first priority right over the underlying real estate as from the date from which the mortgage is signed before a notary public, provided that the filing for registration is submitted within 45 days of date of its execution. This first priority right only includes the maximum amount of the mortgage determined in the agreement, which may include principal, interest, costs and other ancillary amounts secured by the mortgage.

The holder of a first-degree mortgage over real property will be given priority over any and all other credits subsequently secured by a mortgage over the same property, with a few exceptions. Priority is given based on the chronological order in which each mortgage is signed provided that they are subsequently registered within the 45-day period.

12.2.1.2 Foreclosure

Foreclosure of a mortgage is done through a special summary proceeding that makes it possible for the property to be sold at a public auction. However, foreclosure may be conducted through out-of-court proceedings under certain conditions. Foreclosure of a mortgage (or a pledge) is subject to special rules if the debtor is subject to bankruptcy proceedings.

12.2.2 Mortgages over Ships

Mortgages over ships may be created by a notarial deed or an authenticated private instrument. The ship mortgage then must be filed for registration with the National Ship Registry to become effective vis-à-vis third parties.

Under Argentine conflict-of-law rules, mortgages over ships are governed by the law of the ship's flag. Argentina will recognize mortgages established outside Argentina to the extent that the foreign state recognizes mortgages established in Argentina.

12.2.3 Mortgages over Aircraft

Mortgages over an aircraft may be created by a notarial deed or an authenticated private instrument. The mortgage must then be filed for registration with the National Aircraft Registry to be effective vis-à-vis third parties.

Under Argentine conflict-of-law rules, liens over an aircraft are governed by the law of the aircraft's flag. Argentina will recognize mortgages established outside Argentina to the extent that the foreign state recognizes mortgages established in Argentina.

12.3 Pledges

12.3.1 General

As a general rule, to perfect a pledge on a non-registrable movable asset or document of credit, the pledged asset should be delivered to the creditor or placed in the custody of a third party. The CCCN states that a pledge must be executed through a public deed or a private instrument with evidence of the effective date of its execution. Additionally, the "specialty or singularity" principle must be satisfied, as with mortgages.

The CCCN provides that, in the event of default on the secured debt, the creditor may sell the pledged asset through a court auction. In principle, the creditor may not obtain ownership of the asset. However, the creditor who has a pledge on an asset has a priority right to the proceeds from an asset sale.

Unless the debtor and creditor agree on a special sales proceeding, the pledged asset must be sold by public auction, and duly announced in the Official Gazette.

12.3.2 Registered Pledges

Decree-Law No. 15,348/46, of May 28, 1946 (as ratified by Law No. 12,962, and further amended), has made it possible to create pledges on assets that remain in the possession of the pledgor. These pledges are known as "registered pledges," and include "fixed" 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. The amount of the pledge is limited to the amount of the secured obligation, including, without limitation, interest and other ancillary amounts.

Registered pledges do not require a public deed. They may be established through an authenticated private instrument using forms provided by and filed with the Registry of Pledges. Fixed pledges fall under the jurisdiction of the Registry of Pledges where the assets are located, and floating pledges fall under the jurisdiction of the Registry of Pledges where the debtor is domiciled. The pledge becomes effective *vis-à-vis* third parties only upon filing.

12.3.3 Foreclosure

Pledge certificates, which are delivered by the relevant public registry, grant the right to initiate summary enforcement proceedings. Claims may be filed, at the option of the creditor, in the jurisdiction where payment was agreed, where the goods are located, or where the debtor is domiciled, except when the debtor is considered a consumer. In that case, it is mandatory to file the claim in the jurisdiction where the debtor is domiciled.

Regarding the enforcement of the pledge, the proceeds must be applied first to paying all taxes and expenses incurred to protect the assets and second to paying the principal and interest of the debt secured by the pledge.

12.3.4 Pledges of Shares

Pledges of shares are governed by the CCCN and General Companies Law No. 19,550.

Under Argentine law, shares must be issued in non-endorsable registered form or book-entry form. Pledges over shares must be reported to the issuing company or the registrar (if any), and they must be recorded in the company's or the registrar's books. The pledge only takes effect *vis-à-vis* the company and third parties from the date on which it is registered in the company's or registrar's books.

The pledge grants the creditor a priority right over the proceeds of the sale of the shares. For shares or other securities traded on stock markets, those held as collateral may be sold through a stockbroker as soon as the pledgor has failed to comply with its obligations under the pledge.

12.4 Security Assignments and Trusts

Security may also be obtained through security assignments and trusts. Assets may be placed in trust with a receiver who holds them as a separate estate that, according to the CCCN, is not subject to insolvency proceedings of the settlor, receiver or beneficiaries, unless creditors can claim and provide evidence that their claims were established fraudulently or the trust is declared null and void in an insolvency proceeding.

Alternatively, credits may be assigned as a security in favor of creditors. One of the main differences with a trust is that in a security assignment the assigned assets are typically limited to rights or credits, including receivables. With trusts, however, there is no such limitation, and they may be used as vehicles for taking security over most forms of movable and real estate assets.

As a general rule, Argentine law requires that a debtor be given notice of assignment for the assignment to be effective *vis-à-vis* the debtor and third parties. Such notice must be given to the debtor by public instrument (*instrumento público*), typically through a notary public, or by a private instrument that must be of certain date.

Additionally, pursuant to Article 142, part II of Law No. 27,440, in case of guaranty assignments (whether in trust or otherwise) over present and/or future credits, the notice to the debtor may be replaced by the publication of a notice by the assignor in the Official Gazette of the assignor´s jurisdiction and in one of the major circulation newspapers at a national level notifying the assignment.

According to the CCCN, the rules on pledges of credits are applicable to the assignment of credits as security.

12.5 Security Agent and Assignment of Securities

Pursuant to Section 2,186, the CCCN restricts the assignment and transfer of in rem security rights and establishes that such securities may not be transferred without the corresponding transfer of the secured obligations.

However, pursuant to Law No. 27,440, in financings with two or more creditors a security agent may be appointed. Thus, any securities may be established in favor of the security agent, who will act in benefit of the creditors and according to the instructions of the beneficiaries of such securities. The obligations guaranteed by the securities may be transferred to third parties, who will benefit from the securities in the same terms as the original creditors, notwithstanding the provisions of the CCCN in this regard.

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Insolvency and Bankruptcy

El Shincal, Catamarca

Argentine Bankruptcy Law No. 24,522, as amended (the "Bankruptcy Law"), regulates the following three main insolvency proceedings: (i) out-of-court agreement, (ii) reorganization and (iii) bankruptcy.

The general provisions of the Bankruptcy Law apply to legal entities and individuals with a domicile in Argentina, including, without limitation, business organizations in which the government is a shareholder. It also applies to foreign legal entities and individuals with respect to their assets located in Argentina. There are, however, certain exceptions in the case of financial institutions, and some differences with respect to public utilities, pension funds and insurance companies, which are subject to special liquidation proceedings.

13.1 Out-of-Court Agreement

When a debtor is in a situation of 'suspension of payments' (when unable to service debt obligations as they become due) or undergoing economic or financial difficulties, it may seek to reach an agreement with the majority of its unsecured creditors and submit said agreement for court endorsement prior to reorganization proceedings or bankruptcy adjudication.

The parties are free to determine the terms of the restructuring, and the unsecured creditors may be classified in different classes with different restructuring proposals. Even if a court endorsement is not obtained, the agreement is binding among the parties, unless otherwise expressly agreed.

Along with the petition for court endorsement, the debtor must submit the following before the relevant court: a statement of assets and liabilities appraised as of the date of the agreement duly sworn by a certified public accountant; a list of creditors; a list of judicial and administrative proceedings of an economic nature pending or with an unenforced final judgment; an enumeration of the debtor's commercial and other corporate books; the amount of principal represented by the claims held by the unsecured creditors executing the agreement; and the percentage this represents on the aggregate amount of the unsecured claims outstanding.

Upon the filing of the petition for endorsement of the agreement and a preliminary verification of the admission requirements, the court orders the publication of notices informing the admission of the case for five days. The publication of the notice triggers a stay of all claims against the debtor other than the claims of secured creditors seeking foreclosure of the collateral under their secured claims, among other limited exceptions.

To be endorsed by the relevant court, the agreement must be executed by unsecured creditors (excluding those who are also controlling shareholders) representing within each class an absolute majority of creditors on a headcount basis, and not less than two thirds of the aggregate principal amount of the unsecured claims outstanding. Consent of unsecured creditors holding debt securities issued in series (i.e., notes) must be granted at a noteholders' meeting for each series duly called and convened with the required minimum quorum (at least 60% or 30% of the aggregate principal amount of the applicable series in first or second call, respectively). Noteholders' meetings are subject to the following rules: (i) for determining a headcount majority, all votes of each series consenting to the plan will be computed as given by one person and all votes rejecting the plan will be computed as given by one person, and (ii) the aggregate principal amount of the securities held by the holders consenting to the plan will be computed for determining the principal amount majority, provided that widely followed court precedents have construed that for purposes of calculating the principal majority within each series, the principal amount of the notes not appearing at the meeting or otherwise not voted will not be computed.

Upon court endorsement, the agreement is binding on all unsecured creditors, even those who have not executed the agreement or have challenged the proceedings or the agreement.

13.2 Reorganization Proceedings

Debtors may file a voluntary petition for reorganization (*concurso preventivo*) at any time prior to bankruptcy adjudication. Admission of the petition requires the filing of evidence showing that the debtor is in suspension of payments and that at least one year has elapsed since a court declaration of the performance of any prior reorganization.

In addition, debtors declared bankrupt may in certain limited cases request the conversion of the bankruptcy proceedings to reorganization.

Along with the petition for reorganization, the debtor must submit the following before the relevant court: a description and date of the start of the suspension of payments along with evidence thereof; a statement of assets and liabilities appraised as of the date of the petition duly sworn by a certified public accountant; the debtor's financial statements for the last three fiscal years; a list of creditors; a list of judicial and administrative proceedings of an economic nature pending or with an unenforced final judgment; an enumeration of the debtor's commercial and other corporate books; and a list of employees.

Upon commencement of the reorganization proceedings, the court appoints a receiver and all the proceedings in connection with pre-petition unsecured monetary claims against the debtor (with certain limited exceptions) are automatically stayed and the venue of all such proceedings are consolidated at the court hearing for the reorganization proceedings. Filing of new claims based on those reasons or titles are not allowed. Plaintiffs whose judgments are still pending may choose to continue the lawsuit until a final judgment is granted; or they may file a proof of claim before the receiver waiving prior proceedings. Accrual of interest on pre-petition unsecured claims is suspended. Foreclosure proceedings relating to mortgages and pledges may be initiated or continued in the relevant courts with prior notice to the court that is hearing the reorganization, provided that the secured creditor files proof of such claim with the receiver.

Once a reorganization process commences, the debtor stays in possession of its assets, but their administration is subject to the supervision of the receiver. Nonetheless, the debtor must obtain court approval (with prior notice to the receiver and the creditors' committee) before engaging in most activities deemed to exceed the ordinary course of business, as well as certain material transactions (including transactions on registered property, creation of liens, disposition or lease of goodwill and issuance of

secured debt). In addition, the debtor is forbidden from entering into transactions for no consideration or which would adversely affect the status of pre-petition claims.

A creditors' committee including the three creditors holding the largest claims disclosed by the debtor and an employee representative elected by the debtor's workforce is nominated by the court.

All creditors (including, without limitation, secured creditors) must submit proof of their claims with the receiver, who reviews them and confirms the registration of the claim in the debtor's books and, if appropriate, those of the creditor. There is a nominal fee due in connection with such filings. Both the debtor and any creditor may challenge the filings of proofs of claims made by other creditors. The receiver prepares and submits before the court a report on each individual claim filed, and, based on this report, the court will issue a resolution on the allowance or rejection of the claims.

Within 10 days from the court's decision on the creditors' claims, the debtor must submit a proposal to classify creditors according to the amount, security, cause or other reasonable distinguishing features of their claims. It is acceptable to subordinate certain unsecured claims to other unsecured claims. There must, however, be a minimum of at least three categories: secured creditors, general or unsecured creditors, and labor creditors.

The debtor enjoys a non-compete or exclusivity period of 90 days, extendable by up to 30 additional days, from the date on which the court's resolution admitting the debtor's proposed classification of creditors. During this time, it must create a reorganization plan for each class of unsecured creditors and obtain the consent of the required majorities of the creditors.

To be confirmed by the relevant court, the reorganization plan must be consented by unsecured creditors (excluding those who are also controlling shareholders) representing for each class an absolute majority of creditors on a headcount basis, and not less than two thirds of the aggregate principal amount of the unsecured claims outstanding. Consent of unsecured creditors holding debt securities issued in series (i.e., notes) must be granted at a noteholders' meeting for each series duly called and convened with the required minimum quorum (at least 60% or 30% of the aggregate principal amount of the applicable series, in first or second call, respectively). Noteholders' meetings are subject to the following rules: (i) for determining a headcount majority, all votes of each series consenting to the plan will be computed as given by one person and all votes rejecting the plan will be computed as given by one person; and (ii) the aggregate principal amount of the securities held by the holders consenting the plan will be computed for determining the principal amount majority; provided that widely followed court precedents have construed that for purposes of calculating the principal majority within each series, the principal amount of the notes not appearing at the meeting or otherwise not voted will not be computed.

If at the end of the exclusivity period, the debtor does not obtain consent to the plan by the required majorities, then the court may exercise its cramdown power and confirm the plan if certain requirements are met.

If the court does not exercise its cramdown power, then it will declare the debtor bankrupt provided that, in certain cases, before declaring bankruptcy the court will commence the salvage proceedings as described below.

Once the plan has been approved by the required majorities, the judge must conduct a substantive review of the terms of the plan before approving it. Creditors who have not consented to the proposal may challenge the approved plan if they consider it to be abusive or failing to comply with the rules of the Bankruptcy Law.

A plan duly confirmed may be declared null and void at the request of a creditor. The request must be filed within six months after the plan was confirmed and based exclusively on the willful exacerbation of the liabilities, recognition or simulation of inexistent or unlawfully granted securities, concealment or exacerbation of the assets, known after the elapse of the statutory term for challenging the plan as described above.

13.3 Salvage Proceedings

Based on the Bankruptcy Law, under certain conditions the bankruptcy of certain entities (i.e., limited liability companies, corporations, cooperatives and companies with state participation) will not necessarily follow if the debtor fails to obtain the consent of the required majorities to get a confirmation of its reorganization plan.

If the debtor fails to obtain the requisite majorities and the court does not exercise the cramdown power as described above, instead of declaring bankruptcy, the court will open a registry for a five-day period during which any creditor, interested party and/or a Cooperativa de Trabajo (workers' cooperative formed by employees of the debtor) may register for filing an offer for purchasing the debtor's equity and formulating competing reorganization plans, during which the debtor may also file a new competing reorganization plan. If the five-day period elapses and no person has requested registration, the debtor will be declared bankrupt.

Registered persons or entities are entitled to file their proposals with respect to the same categories of creditors as provided by the debtor, or they may propose new categories of creditors. Within a 20-day period, registered persons have to obtain the consent of the creditors to their respective plans with the same requisite majorities that are required for a confirmation of the debtor's original reorganization plan.

The first of the registered persons showing evidence of consent to its reorganization plan by the requisite majorities of creditors is awarded the right to purchase the debtor's equity for an amount not less than its value as assessed by the court. If no competing reorganization plan is consented by the requisite majorities of creditors within the 20-day period, the debtor will be declared bankrupt.

13.4 Bankruptcy

Bankruptcy may be adjudicated indirectly upon the failure of reorganization proceedings, or directly upon request of the debtor (i.e., voluntary bankruptcy) or of any of its creditors (i.e., involuntary bankruptcy). A condition for filing a voluntary or involuntary petition for bankruptcy is that the debtor must be in suspension of payments.

The filing of a petition for voluntary bankruptcy must include: (a) a description and the date of the start of the suspension of payments along with evidence of such; (b) a statement of assets and liabilities appraised as of the petition date duly sworn by a certified public accountant; (c) the debtor's financial statements for the last three fiscal years; (d) a list of creditors;(e) a list of judicial and administrative proceedings of an economic nature pending or with an unenforced final judgment; and (f) an enumeration and submission of the debtor's commercial and other corporate books.

The filing of a petition for involuntary bankruptcy must include evidence of the claim and of the suspension of payments. Upon the filing of an involuntary bankruptcy petition, the court will give a five-day notice to the debtor. The petition may be dismissed if during that period the debtor provides evidence to the court that it is not in suspension of payments (i.e., the deposit of the amounts owed to the plaintiff). After bankruptcy is adjudicated and within 10 days after the publication of the bankruptcy adjudication notices, the debtor may file a motion requesting the conversion of the bankruptcy proceedings into reorganization, provided that the bankruptcy was not adjudicated as a consequence of the breach of a reorganization plan or while reorganization proceedings were pending, or if one year has elapsed since a court declaration of performance of a prior reorganization.

Unlike reorganizations, at the time of a bankruptcy adjudication the debtor loses possession of its assets, which will be subject to the administration of a court-appointed receiver who will, among other things, collect all the debtor's receivables.

Adjudication of bankruptcy has, among other things, the following effects:

(i) all proceedings on unsecured claims against the debtor are automatically stayed and the venue of all such proceedings is consolidated at the court that hears the bankruptcy proceedings;

(ii) new proceedings on unsecured claims are not allowed to be started;

(iii) accrual of interest on unsecured claims (other than labor claims) is suspended;

(iv) interest on secured debts will continue to accrue, but may only be claimed to the extent of amounts realized from the security interest;

(v) secured creditors may enforce their pledges or mortgages pursuant to a final judgment, provided that upon a request by a *Cooperativa de Trabajo* (workers' cooperative) such enforcement may be suspended by the court for up to two years;

(vi) all obligations of the debtor become due and payable; all claims denominated in foreign currency are converted into Argentine pesos at the exchange rate as of the bankruptcy adjudication date or the stated maturity (if prior) at the option of the creditor;

(vii) arbitration clauses are inapplicable, except if prior to the bankruptcy adjudication, the arbitral tribunal was already constituted; agreements with reciprocal obligations pending are suspended (except limited exceptions); and

(viii) the managers of the debtor or the natural person debtor will be subject to restrictions such as requiring the court's prior authorization to travel outside Argentina and will be disqualified from doing business, acting as administrator, manager, trustee, liquidator or incorporator of companies, or acting as agent or attorney-in-fact with general powers for a term of one year from the bankruptcy adjudication date or the suspension of payments.

All creditors, including, without limitation, preferred or secured creditors, must submit proof of their claims with the receiver. As with reorganizations, there is a nominal fee for such filings. The receiver must promote the formation of a creditors' committee to oversee the liquidation.

In certain circumstances, the receiver may decide on the immediate continuation of the debtor's activities, subject to court approval. This could be the case for public utilities, or to avoid damages to the creditors or preserve the assets of the estate, or at the request of at least two thirds of the debtor's employees organized in a *Cooperativa de Trabajo* (workers' cooperative) to preserve employment. If the debtor's activities are continued, the receiver or the workers' cooperative, whichever is the case, will manage the assets of the estate with the powers to perform all acts within the ordinary course of business. Any act beyond this limitation, including incurring unsecured or secured debt, is subject to the prior approval of the court.

If no decision is made on the continuation of the debtor's activities, the receiver will move forward with the liquidation of the assets of the estate. Before beginning the liquidation process, the workers' cooperative may make a request to the court to purchase the debtor's equity and compensate this purchase price against its labor claims.

The liquidation may be carried out either by the sale of (i) the entire business as an ongoing concern, (ii) the bulk of all the estate's assets, or (iii) each individual asset of the estate.

After liquidation, expenses and claims enjoy the following order of preference in payment:

(i) claims with special preference, with priority of payment in respect of the proceeds of the assets affected in each case (including credits secured with mortgage or liens);

(ii) administrative expenses including debts incurred in connection with the administration of the case, and with the maintenance, administration and liquidation of the estate's property;

(iii) claims with general preference including certain labor claims and principal on contributions to social security and taxes;

(iv) unsecured claims; and

(v) subordinated claims.

After concluding the liquidation procedure, the receiver prepares a final report, including proposals for the distribution of the proceeds among the creditors, and notice is given to the creditors, who may file objections. After all of the distributions to creditors have been completed, the bankruptcy proceedings conclude, and the debtor will be discharged.

The debtor has the right to terminate the bankruptcy proceedings and the related proceedings described above before liquidation by means of a payment agreement with all admitted creditors, who must also agree with the termination of the bankruptcy proceedings. If the debtor is not able to agree with one or more of the creditors, it has the right to guarantee or deposit with the court the amount due to those creditors in order to lift the bankruptcy proceedings.

Under exceptional circumstances, a debtor's bankruptcy adjudication may be extended to a debtor's shareholders with limited liability and other third parties. The bankruptcy adjudication may be extended to:

(i) any person who caused the debtor to conduct activities for such person's sole benefit and managed the debtor's assets as if they were the property of such person in fraud of the debtor's creditors, provided that such person must have:

a) had an active role in the debtor's bankruptcy;

b) shown willful misconduct;

c) had conflicting interests;

d) caused an actual diversion of the debtor's assets for its own benefit; and

e) caused fraud against the debtor's creditors.

(ii) any controlling shareholder of the debtor who unlawfully diverts the debtor's corporate interest, and subjects the debtor to a common management with the purpose of pursuing such controlling or such controlling entity corporate group's benefit; and

(iii) any person whose assets and liabilities are commingled with those of the debtor in such a way that makes it impossible to identify the owner or holder of them.

The following third parties may be held liable for any damages arising from the debtor's bankruptcy: i) the members of the board of directors and representatives that willfully provoked, facilitated, allowed or aggravated the debtor's economic and financial situation or its insolvency; and ii) any third party, including the shareholders, who willfully participated in acts leading to the depletion of the debtor's assets or to unduly increase the debtor's liabilities (known as an exaggeration of the debtor's liabilities), before or after the adjudication of bankruptcy.

13.5 Pre-Petition Void or Voidable Transactions

Certain transactions carried out by the debtor within the claw-back period are void or voidable. The claw-back period is the period starting with the suspension of payments and ending on the date when the debtor files the request for reorganization or is adjudicated as bankrupt. The claw-back period cannot extend more than two years from the date immediately preceding the date of filing of the request for reorganization or the date of the adjudication of bankruptcy.

The following transactions carried out by the debtor during the claw-back period are void:

(i) transactions without consideration (*a título gratuito*);

(ii) advance payments on account of debts that are due on or after the bankruptcy adjudication date; and

(iii) granting of security (mortgage, pledge or any other preference) in respect of debts not due and not secured under their original terms.

Any other transactions detrimental to the creditors carried out by third parties during the claw-back period with knowledge of the debtor's insolvency are voidable. The third party has the burden of proving that the transaction did not cause any detriment to the creditors.

Generally, neither the transactions carried out by the debtor in the ordinary course of business during a reorganization proceeding, nor the transactions exceeding the ordinary course of business or disposition of assets carried out by the debtor during a reorganization proceeding, or the implementation of the plan with the authorization of the court, are subject to an avoidance action.

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Public Law

Purmamarca, Jujuy

14.1 Introduction

Argentina is a federal country organized under a federal constitution. The Argentine Government coexists with 24 local governments (23 provinces and the City of Buenos Aires).

The Argentine Government has exclusive power to enact laws concerning international and interprovincial trade and the codes concerning civil, commercial, criminal, mining, labor and social security matters, which are applicable throughout the country by federal and local authorities.

Administrative law is of a "local" nature. The Argentine Government, each province, the City of Buenos Aires and the municipal governments may enact or issue their own laws or regulations on administrative matters. Such laws and regulations must comply with the Argentine Constitution as well as with the constitution of the relevant province or of the City of Buenos Aires. In most cases, provincial administrative law has not been autonomously developed, so generally speaking the same administrative law jurisprudence and principles are followed at both federal and local levels.

14.2 Judicial Review of Administrative Rulings

Argentina's constitutional system and the Argentine Supreme Court's (the "CSJN" after its Spanish acronym) case law allow for a judicial review of administrative rulings and of the constitutionality of laws. Although this review has been admitted from the very beginning of the country's constitutional life, its effectiveness has varied throughout the years.

While there are no formal barriers to access the judiciary, the court tax (in principle, 3% of the amount involved without a cap) and the short terms to exhaust administrative remedies (15 days at the federal level) may, in practice, restrict the judicial review of administrative decisions. There are extraordinary tools that may be used to by-pass these limitations: the Summary Constitutional Action (*amparo*) and the Unconstitutional Declarative Action. However, there are strict requirements for their feasibility. The first tool is usually effective in cases of manifest violations of constitutional rights, but a very short term applies to this remedy (15 business days at the federal level). The second tool can be used to prove the inexistence of another legal way better suited to stop the state of uncertainty.

In certain cases, private parties may obtain a court injunction to suspend the effects of administrative rulings. In cases in which the Argentine Government or its entities are parties, the procedure should follow Law No. 26.854, which contains certain limitations in relation to this kind of remedy.

14.3 Procurement Regulations

Considered a typical administrative matter, public procurement is governed by administrative law. Contracts executed by administrative agencies are governed mostly by administrative law rather than civil or commercial law. Given that, as mentioned above, administrative law is local as opposed to federal, each province and the City of Buenos Aires may enact its own laws and regulations regarding public procurement.

Procurement laws and regulations are generally applicable to most of the contracts entered into by the government, including (i) public works contracts; (ii) public service concessions or licenses (i.e., utilities); (iii) supply agreements; and (iv) consulting services agreements, etc.

Government contracts are generally governed by the rules in the relevant legislation, as supplemented by (a) the specific bidding terms and conditions issued ad-hoc when the bidding and tender process is called and (b) the particular terms of the contract.

As a general principle, public procurement must be done by means of a competitive bidding process that ensures equality between all bidders.

The bidding terms and conditions usually impose certain economic and technical requirements (e.g., expertise in similar works, a minimum net worth, and certain debt ratios) for the granting of public contracts. "Buy Argentine" requirements are also applicable at federal and local levels. At a federal level, in 2018 a new "Buy Argentine" regime applicable to the public procurement of goods was created under Law No. 27,437, regulated by Decree No. 800/18, to which local governments are expected to adhere.

In May 2019, the Executive Branch of the City of Buenos Aires issued Decree No. 168 which introduced a series of modifications to the Government of the City of Buenos Aires' procurement regime. This regulation encourages the application of technologies to public procurement, to continue speeding up the contractor selection process and making public procurement more efficient.

14.4 Public Works and Utility Concessions

Depending on their location and scope, contracts for public works and utilities may be subject to federal, provincial or municipal regulations. The authorizations required to do public works or to operate a utility may vary from one jurisdiction to another.

In early 2019, a major pipeline extension project was launched in the Province of Chubut. Further works on gas liquefaction plants aimed at exporting liquid gas as from 2023 are expected to be carried out in the upcoming years.

During 2019, several improvements on public transport have been achieved as a result of public works in the City of Buenos Aires (including ground, railway and subway transportation). Further works in this regard are expected to be carried out in the near future.

Furthermore, in July 2019 a call for bids was launched, in connection with a major project aimed at expanding and modernizing the international tunnel that connects Argentina and Chile through the Andes Mountains, partially financed by the Inter-American Bank of Development (IBD).

14.5 Private Initiatives and Public-Private Partnerships

The Argentine Government and some provincial governments have enacted regulations to foster private initiative in projects of public interest.

Some jurisdictions have passed regulations that allow private investors to propose public works or projects to the government to meet public needs. Should the proposals be declared of public interest, the private investor who initially filed the proposal obtains certain advantages in the subsequent competitive bidding proceedings.

Legal frameworks for the participation of private investors in the design, construction, operation, maintenance and financing of infrastructure works are in place at the federal level and in some provinces. Project financing and turnkey schemes are being contemplated as well, particularly for renewable energy projects.

In 2017, the Federal Public-Private Partnership Contracts Regime (the "PPP Regime") was established by Law No. 27,328 and Decree No. 118/2017. The PPP Regime allows for balanced and predictable cooperation between the private and the public sector.

The PPP Regime implies a shift in the traditional paradigm of public contracts as it excludes or limits public law prerogatives of the administration. This includes the limitation of state liability as well as the power to unilaterally modify a contract or to terminate it for reasons of public interest and to force the private contractor to continue the project despite the state's failure to comply with its own obligations.

PPPs are an alternative regime for public works and public concessions. They do not hinder the use of traditional systems. The public sector may consider the most suitable contracting method to meet public needs in each project. In cases in which public services constitute the purpose of the agreement, the relevant specific regulations related to such services must be applied.

Several provinces i.e., the provinces of Buenos Aires, Catamarca, Chaco, Córdoba, Mendoza, Neuquén, Tierra del Fuego, Jujuy, Formosa, Entre Ríos, Chubut, Corrientes, Santa Cruz, La Rioja, Misiones, Salta, Río Negro and the City of Buenos Aires have already adhered to the Federal PPP Regime, whilst others (such as the province of Santa Fe) are on the verge of passing adhesion bills.

During 2018, the Safe Highways and Roads Network PPP Program – Stage 1 was tendered and awarded. This was the first PPP initiative to be carried out by the Argentine Federal government under the PPP Regime. The awarding includes the design, construction, rehabilitation and improvement of more than 3,000 kilometers of roads throughout the country and their operation and maintenance. Stage 2 has not yet been scheduled.

There are other tenders under the PPP Regime which are currently being developed, though at an early stage, or expect to be launched before 2023, which include:

(i) the improvement of energy efficiency in street lighting;

(ii) the construction of electric power transmission lines; and

(iii) a regional express-train network (the "RER" after its Spanish acronym), including the construction of tunnels and underground stations.

Additionally, in October 2019, the *"Portezuelo del Viento"* project was launched. It entails the construction of a multipurpose hydroelectric power station which will be located on the Rio Grande River in the Province of Mendoza and will have an installed capacity of 210 MW.

14.6 State Liability

Federal Law No. 26,944 (the "Federal Law on State Liability") regulates the tort liability of the state and public officers, including state liability for unlawful and lawful actions.

The Federal Law on State Liability provides direct and objective liability, which consists of the concept of *faute de service*, or misconduct, that is applicable to cases of liability due to unlawful action, and the notion of "special sacrifice" for liability due to lawful action.

The new Argentine Civil and Commercial Code (the "CCCN" after its acronym in Spanish) is consistent with this regulation on the tort liability of the state and public officers, since both determine that state liability is not governed directly or as a default rule by that code, because it is a matter of public law that must be regulated by the Argentine Government and the provinces in their respective jurisdictions.

The provinces and the City of Buenos Aires have been invited to adhere to the regulations on state liability to provide for uniform legislation on this matter across the country.

14.7 Public Ethics

Argentina has ratified the Inter-American Convention against Corruption, the United Nations Convention against Corruption, and the Convention against Bribery of Foreign Public Officers in International Transactions.

These international conventions, along with their implementing public ethics regulations enacted by the Argentine Government, prohibit and punish the offering or granting of any goods or other benefits to government officers in exchange for the performance or the failure to perform actions relating to their public duties.

While until recently, only individuals could be found liable for crimes of bribery and corruption, in November 2017, the Argentine Congress passed Law No. 27,401 regarding corporate criminal and administrative liability in bribery crimes.

In recent years, several measures have been taken to improve transparency in the public sector in a bid to rebuild social trust in public institutions. Decree No. 201/2017 established a new protocol applicable to proceedings of any nature between the Argentine Government and individuals or legal entities related to the highest authorities of the executive branch of the Argentine Government. In turn, Decree No. 202/2017 requires participants of public bids, parties to public contracts and solicitors of permits or authorizations to file a conflict of interest affidavit and, when there might be a potential conflict of interest between them and high-ranking officers of the executive branch (i.e., the President, Vice-president or its Cabinet), both the *Procurador del Tesoro* (who holds legal representation of the Argentine Government) and the Anti-corruption Office must be notified.

In line with the above, Decree No. 1030/2016 applied new technologies to public procurement procedures enabling procuring entities to make contracting documents publicly available through web-based platforms.

In line with the OECD Principles of Corporate Governance, Good Practice Guidelines for state-owned companies were also adopted by the executive branch of the Argentine Government, amongst which the principles of integrity and transparency play a major role.

In March 2019, a bill on public ethics was presented by the Argentine Executive.

The first National Anti-Corruption Plan (for the 2019-2023 period) was adopted by means of Decree No. 258/2019. It comprises several measures which seek to improve transparency and expedite the government's openness towards citizens and to strengthen accountability and citizen control. At the same time, emphasis is put on the use of new technologies to encourage the exchange of information.

In September 2019, through Decree No. 650/2019 and Administrative Ruling No. 797/2019, the Argentine Executive established a network of Integrity Links for the different jurisdictions and decentralized agencies that comprise the Argentine Public Administration. These measures reinforce the guidelines provided in Decree No. 258/2019 and the recommendations made by the OECD within their study on Integrity in Argentina (2019), regarding the implementation of contact and cooperation points in matters of public integrity.

In December 2019, certain changes related to the Argentine Anti-corruption Office (the "OA" after its acronym in Spanish) were adopted through Decree No. 54/2019 providing that the OA now became a decentralized agency of the Argentine Executive and that the Director of the OA holds the hierarchy equivalent to a Federal Minister.

14.8 Access to Public Information

The Federal Law on Access to Public Information No. 27,275, and its Regulatory Decree No. 206/2017, is in line with traditional jurisprudence and international commitments and recommendations. The purpose of this regulation is to guarantee the right to have access to public information and to promote citizen involvement and transparency in public affairs, based on principles of equal treatment, procedural celerity and maximum disclosure.

The law regulates who must provide access and the exceptions for providing the information. It also created the information request procedure and the Public Information Access Agency.

14.9 Bilateral Investment Treaties

The bilateral investment treaties signed by the Argentine Government with most OECD countries grant direct rights protecting foreign investors (e.g., fair and equitable treatment, protection in the case of direct or indirect expropriation, national treatment, most favored nation treatment) and provide international arbitration (under the ICSID or UNCITRAL rules) to obtain relief for acts or omissions adopted by Argentina and any of its political subdivisions.

14.10 Funding of political parties

In May 2019, the Argentine Congress passed Law No. 27,504, which introduced amendments to the political party funding regime (Law No. 26,215), as well as to the Federal Electoral Code and the Charter Law of Political Parties. The amendments provided by this new law are mainly aimed at strengthening transparency and control of the funding of political parties and of their expenditures.

MARVAL
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MAIRAL

Mining

15.1 Introduction

Mining in Argentina is governed by Law No. 1919 (the "Mining Code"), which was first enacted in 1886 and has undergone several amendments since.

As in most Latin American countries, Argentine mining law is based on the principle that all mineral deposits are owned by the state. Each province, the City of Buenos Aires or the Argentine Government is considered the owner of the minerals in its respective jurisdiction. However, individuals and legal entities may obtain concessions from these entities to explore and develop the deposits and may freely dispose of the minerals extracted within the concession area. Section 8 of the Mining Code establishes the general principle that "the right to explore and develop mines and dispose of them as owners is granted to private individuals and companies in accordance with the provisions of this code".

The Mining Code enables concessions for exploration and development. Exploration concessions grant a right to search for mineral resources within a specified area and the right to obtain a development concession if a discovery is made during the term of exploration.

The provisions of the Mining Code do not apply to oil and gas deposits. Additionally, the mining of ores used in the nuclear industry (uranium and thorium), although subject to the Mining Code, must comply with additional regulations.

The second concession is for development and includes the mine and its deposits as well as the buildings, machinery, vehicles, etc., used in developing the mine. The law considers this concession to be a real property right distinct from the title to the surface land where it is located. Once the finder's rights are incorporated into public deeds and registered with the Registry of Mines, the development concession gets the title. Development concessions may be sold or transferred like any other real estate property. The transfer document must be notarized and registered with the appropriate administrative mining registry. Mortgages may also be granted for development concessions. Since mineral products are movable assets, once extracted they can be pledged as security for financing purposes.

Upon the occurrence of certain events, the Mining Code provides for the possible termination of the concession.

15.2 Classification of Mines

Based on the type of mineral discovered, mines are categorized into three classes.

The first class of mines is for gold, silver, platinum, mercury, copper, iron, lead, tin, zinc, nickel, cobalt, bismuth, manganese, antimony, wolframite, aluminum, beryllium, vanadium, cadmium, tantalum, molybdenum, lithium and potassium. Certain fuels, such as mineral coal, lignite, anthracite coal and solid hydrocarbons, and non-metals like arsenic, quartz, feldspar, mica, fluorite, calcareous phosphates, sulfur, borates and precious stones are also included in this category.

The second class of mines is divided into two categories. The first is for metallic sands and precious stones found in riverbeds and the banks of watercourses, or at the tailing dams of abandoned mines. Minerals falling into this category may be mined by anyone without having to obtain a concession. The second category is for saltpeter, saline lakes, peat bogs, metals not included in the first class of mines, and low-grade aluminous soils, abrasives, ochres, resins, steatite, barium sulfate, low-grade copper ores, graphite, fine white clay, alkaline salts or earthy alkaline salts, amianthus, bentonite, zeolite, and permutable or permutitic minerals. The owner of the surface rights has a preferential right to the deposits within their subdivision, but they must have their claims officially demarcated.

The third class of mines is for minerals of an earthy or rocky nature used in the construction and ornamental industries. Generally, these deposits belong to the surface owner.

15.3 Exploration of Mineral Resources

Prior to launching exploration works, the mining company may obtain an exploration concession from the provincial mining authority as to whether the land is public or private. The exploration concession grants the explorer the exclusive right to explore and eventually obtain a development concession to

work any deposit of any mineral discovered in the concession area. The minerals are not limited to those mentioned in the request for exploration rights.

15.4 Development of Mineral Resources

If a discovery is made during exploration, the finder must register the discovery with the provincial mining authority. The territory may not be explored or developed by third parties until the end of the staking proceedings.

The next step is to define the limits of the concession for development. The finder must file a request for a development concession with the mining authority.

15.5 Mining Concessions

15.5.1 Acquisition

Mines are acquired through a legal concession. Mines that can be acquired through a concession (original acquisition) are: **(I)** discoveries and **(II)** null and vacant mines.

15.5.2 Effects

A mining concession grants the concessionaire ownership of every deposit found within its boundaries. However, the finder must inform the relevant mining authority of the existence of any mineral different from the one registered. This information is needed for determining the mining royalty and the required capital investment. It is preferable to exploit the first class of mines on land containing the second and third class of mines. This allows the concessionaire to exercise the right of accession, form mining groups and acquire the land, among other things.

15.5.3 Withdrawal

Concessionaires can withdraw from a mining concession through a direct and spontaneous act that informs the relevant mining authority of their decision to not move ahead with the mining works. A written declaration must be filed as well with such mining authority.

15.5.4 Mining Fee

Mines are awarded through the payment of an annual royalty established by the Argentine Congress and paid to the relevant federal or provincial government, depending on the location of the mines.

15.5.5 Investment Plan

The concessionaire must submit an estimate of the capital investment plan to the relevant mining authority. The investment plan should include (i) the works for mine workers, (ii) the building of camps, roads and other constructions for exploration purposes, and (iii) the acquisition of machinery, facilities and production equipment that will permanently be at the mine.

15.5.6 Termination of the Mining Concession

Mining concessions may be terminated for the following reasons: (a) failure to pay the annual fee; (b) failure to file the estimate of the investment plan; (c) making investments contrary to the requirements of the Mining Code; (d) if the amount of the investment made is less than 300 times the annual fee; (e) failure to file the annual affidavit on the progress of the investment plan; (f) committing fraud in the annual affidavit for the development of the investment plan; (g) lack of compliance with the estimated investments; (h) a modification and reduction of the estimated investment without prior notice; (i) withdrawal of assets that reduces the investment plan; and (k) inactivity of the mine for more than four years.

15.5.7 Applicable Regulations to Common Use Substances

Second-class minerals are classified into (i) those awarded to the owner of the land as a prior right and (ii) those of common use.

The following are common use minerals: (a) metal sands and precious stones found in river beds, running water and water sources; (b) clearing lands, tailings and cinder dumps of previous exploitations, as long as such mines are abandoned, and abandoned or opened tailings and cinder dumps, as long as the owner does not recover them; and (c) national and municipal-owned quarries, as long as they are not transferred to third parties or bound by an agreement.

For the common use minerals in (a) and (c), no concession, permit or prior notice is required. However, for the minerals in (b), given the existence of evidence of a previous exploitation, a declaration issued by the enforcement agency is required to determine the common-use state of the land.

15.5.8 Third-Class Mines

Third-class minerals are the mineral productions of stony or earthy nature and, in general, all minerals used as construction and ornamental materials which form quarries. Mines included in the third class do not require the granting of legal concession for exploitation, given that they belong to the land-owner. Third parties may exploit third-class mines in privately owned lands if such exploitation is declared a "public use development"

15.5.9 Nuclear Minerals

Section 205 of the Argentine Mining Code states that "all aspects of exploration and exploitation of nuclear minerals and land clearing, tailing and slag heaps containing said minerals not provided hereunder will be governed by the provisions of this Code regarding first and second-class mines." On the other hand, Section 206 of the Argentine Mining Code states that "uranium and thorium" are nuclear minerals. Consequently, uranium and thorium are included within the first-class minerals and land clearing, tailing and slag heaps containing them are common use substances. The acquisition processes for first-class substances and common use substances are applicable to uranium and thorium with the particular features described below:

(i) Those who exploit mines containing nuclear minerals are obliged to submit the following: (a) a restoration plan for the natural area affected by mining waste and to neutralize, conserve or preserve the tailing or liquid or solid particles and other processing products containing radioactive or acid elements (Mining Code, Section 207); and (b) as requested by the Argentine Commission on Atomic Energy (the "CNEA" after its acronym in Spanish) and the Mining Authority, the information regarding reserves and production of nuclear minerals and their concentrates (Mining Code, Section 208).

(ii) The Argentine Government, through the CNEA, will have the first option to acquire nuclear minerals, their concentrates and their derivatives produced in the country, under normal price conditions and usual market methods, (Mining Code, Section 209).

(iii) The export of nuclear minerals concentrates and their derivatives will require prior approval by CNEA.

15.6 Specific Tax Treatment

Mining activities have special tax incentives that should be carefully analyzed in the decision-making process for a new investment in the area. Legal statutes on tax incentives allow for: (a) the financing or reimbursement of the value-added tax payments made by mining companies; (b) a 30-year tax stability for the taxes in force at the time of submitting the feasibility report; (c) the beneficiaries have the right to deduct from their income taxes 100% of the amounts invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works for determining the technical and economic feasibility of a project; (d) the possibility of accelerating (over three years) the depreciation of investments made on housing, transportation, plant construction and equipment required for the mining activities; (e) the exemption from paying income taxes derived from the profits of the mines and mining rights, used as payment for the subscription of shares of registered beneficiary companies; (f) exemption from paying taxes on the assets; (g) exemption from all import duties and any other taxes for importing capital goods; and (h) a 3% cap on royalties, among other benefits.

15.7 Cyanide

The following Argentine provinces have banned cyanide from mineral processing: (i) Chubut; (ii) Tucumán; (iii) Mendoza; (iv) La Pampa; (v) Córdoba; (vi) San Luis; and (vii) Tierra del Fuego. The Provinces of La Rioja and Río Negro, which had banned cyanide use for metal processing, revoked the prohibition in 2008 and 2011, respectively.

MARVAL O'FARRELL MAIRAL

Energy

Martial Glacier, Ushuaia

16.1 Background: From Regulatory Reform to Emergency Law

In 1992, the power sector was reformed, liberalized and privatized at federal and provincial levels. At the federal level, the reform was instrumented by Law No. 24,065 and its regulations—Decree Nos. 1398/1992 and 18619/95, and Resolution No. 61/1992, among others (the "Regulatory Framework").

The Regulatory Framework is characterized by the following main features:

(i) The vertical division of the power sector into four categories: generation, transmission, distribution and demand, with cross-ownership restrictions between some of these categories.

(ii) The introduction of competition in power generation activities with an electricity wholesale market (*Mercado Eléctrico Mayorista*, or the "MEM", after its acronym in Spanish) so that large users can purchase power directly from generators or traders.

(iii) The privatization of the majority of the existing state-owned assets, including thermal and hydropower plants and transmission and distribution networks (nuclear power plants and bi-national hydropower plants were excluded).

(iv) The creation of an autonomous regulatory agency.

The recurrent economic crises that Argentina suffers impact the energy sector. Hence, the Regulatory Framework is frequently affected by different measures which freeze utility rates and distort power prices. These measures can leave the power system in a critical condition and often reliant on imports from neighboring countries.

Although the partial abrogation of these measures in 2016 allowed certain improvements and augured a better future for the power sector, the latest crisis has put the country and its power system at a significant juncture again and led to the adoption of new interventionist measures for the sector in late 2019 (see 16.4 below).

16.2 Regulatory Agencies

The Regulatory Framework has delegated the decision-making and enforcement powers between the following entities:

(I) The Argentine Executive, through the Secretariat of Energy, has the authority to set the general policies and rules that govern the sector.

(II) The Argentine Regulatory Agency for Electricity (the "ENRE" after its acronym in Spanish), an autarchic entity created within the Secretariat of Energy, has various functions, including the following: **(a)** the surveillance of Regulatory Framework compliance; **(b)** the control of service supply standards; **(c)** the stipulation and calculation of rates; **(d)** the authorization of the construction and expansion of new infrastructure; and **(e)** the mandatory initial jurisdiction to hear any disputes arising among the energy market participants.

(III) The Wholesale Energy Market Administrator (the "CAMMESA" after its acronym in Spanish) coordinates dispatch operations, determines wholesale prices, administers the economic transactions in the MEM and acts as government off-taker in certain power purchase agreements, acting on behalf of large users and distribution companies ("PPAs" after their acronym in Spanish).

16.3 Power Generation: The Wholesale Market

The Regulatory Framework allows for power generation to be carried out within a competitive market environment. As per the Regulatory Framework, in order to build and operate a hydroelectric generation facility, a concession must be obtained from the Argentine Executive. Meanwhile, the operation of thermal power generation plants do not require any specific authorization, other than planning, regulatory, safety, transmission and environmental clearances.

The MEM consists of a spot market and a fixed-term market. In the spot market, the real values of power supply and demand are traded. CAMMESA dispatches available units according to production costs, beginning with the most efficient units.

The energy price is passed through to end-users by the distribution utilities companies. To enable this process, a seasonal price is calculated and fixed quarterly by CAMMESA.

Since 2013, industrial customers must purchase power from CAMMESA rather than directly from generators or traders. The generator's pricing regime has been amended as well. As of February 2013, generators are entitled to recover fixed costs and variable costs, that are calculated based on power generated in line with fuel burnt, plus an additional compensation which varies depending on whether certain availability targets are met.

At the beginning of 2017, after an integral tariff review procedure, new calculation methods were established and, consequently, new increases in electricity seasonal prices applicable through 2018 and 2019 were approved. However, this scenario recently changed due to the issuance of Law No. 27,541 (please see point 16.4 below).

16.4 Transmission and Distribution

Transmission and distribution companies are regulated as public utilities.

Transmission services are provided by concessionaires that own and operate high- and medium-voltage transmission lines. The business involves the transformation and transmission of electricity from the generators' delivery points to the reception points of distributors or large users. The Regulatory Framework mandates that transmission companies must be independent from other participants in the MEM, barring them from buying and selling power.

The rates charged by electricity transmission companies include: (a) a connection charge; (b) a transmission capacity charge; and (c) a charge for the actual energy transmitted. Incoming revenues from system expansions are regulated separately. Transmission rates are billed to generators or passed through to end users through distributors.

Distribution companies are in charge of supplying end users whose consumption level prevents them from entering a contract with their power supply independently.

The main features of the concession agreements for power transmission and distribution services are: (a) service supply quality standards which if not met are penalized; (b) a 95-year concession agreement for monopoly service supply within an area or grid, divided into "management terms" for an initial 15-year term and subsequent 10-year extensions (at the end of the full term, the majority stock of the corporation may be offered for sale again); (c) the rates are fixed by economic criteria (e.g., price caps, following a pre-determined scheme for their calculation and adjustment).

The fees charged by distribution companies consist of the following: a) the price of purchasing power in the MEM (i.e., the seasonal price described above); b) transmission costs, and c) an added value for distribution (the "VAD" after its acronym in Spanish) to remunerate the distributor's activity. The VAD represents the economic or marginal cost of the networks available to users, plus the network operating and maintenance costs and management costs. All of these costs are considered within a framework of reasonable business efficiency. The determined rates must make it possible for an efficient distributor to cover operating costs, finance the renewal and improvement of facilities, satisfy growing demand, meet predetermined quality standards and obtain a reasonable return, considering its operational efficacy and efficiency in line with the amounts invested and with the national and international risk inherent to the activity.

At the beginning of 2016, and in line with the price readjustment policy pursued by the Argentine Government to relaunch and recover the MEM and the national power matrix, power transportation and distribution tariffs applicable to services provided by concessionaires operating under federal jurisdiction were substantially raised.

However, in December 2019 the Argentine Congress passed Law No. 27,541 (known as the "Social Solidarity and Productive Reactivation") that declared a public emergency in economic, financial, fiscal, administrative, pension, tariff, energy, health and social matters, and delegated to the Argentine Executive multiple legislative powers to attend the referred emergency. The basis for the legislative delegation includes (i) the restructuring of the energy tariff scheme following distributive equity and productive sustainability principles, and (ii) the reorganization of the energy sector's regulatory agencies to guarantee an efficient administration

Regarding tariff regulation, Law No. 27,541 provides:

(i) Tariff freeze: Electricity tariffs (including transmission and distribution) subject to federal jurisdiction shall not be adjusted for a 180-day term as from the Law's effective date (December 23, 2019). Provinces are invited to implement this policy (article 5).

(ii) General renegotiation: The Argentine Executive is entitled to renegotiate tariffs subject to federal jurisdiction, within the framework of the existing General Tariff Revisions or by means of extraordinary revisions, pursuant to Law No. 24,065, to reduce the burden of these tariffs on homes and commercial and industrial facilities during 2020 (article 5).

(iii) Administrative intervention: The Argentine Executive is entitled to intervene in the ENRE for a 1-year term (article 6).

16.5 Recent Policy Measures and Investment Programs

In late 2015, the Argentine Executive declared that the national electricity system would be under a state of emergency until December 2017. It entrusted the former Ministry of Energy and Mining to take measures to improve the quality and security standards of the generation, transmission and distribution segments to ensure that public services were provided in compliance with suitable technical and economic conditions.

In 2016, CAMMESA launched a public tender process to award power purchase agreements (PPAs) for thermal generation units via Resolution No. 21/2016 of the former Secretariat of Electric Energy, and a year later cogeneration facilities were also included through Resolution No. 287/2017. Both tenders were aimed at the installation of new generation capacity. Specifically, Resolution No. 287/2017 focuses on combined-cycle and cogeneration facilities.

In 2017, the former Secretariat of Electric Energy enacted Resolution No. 19/2017 ("Resolution 19"), which allowed MEM generators to submit to CAMMESA their commitments of guaranteed availability ("CoDiGs" after their acronym in Spanish) for the capacity and associated electric energy of their facilities, to the extent the generator's production had not been previously subject to a PPA.

In 2019, Resolution 19 was abrogated by Resolution No. 1/2019 of the former Secretariat of Electric Energy, which upheld a similar scheme but introduced some differences.

The amendments include (i) a reduction of the issuance period for CoDiGs, now set at one-year periods; (ii) the elimination of the provision that refrained state-owned generators and generators where the Federal Government is the majority stockholder from submitting CoDiGs; and (iii) the adjustment of prices previously established by Resolution 19.

In March 2019, the former Secretariat of Energy relaunched a public tender to award the construction, operation and maintenance of approximately 900 kilometers of high-voltage transmission lines through a public-private partnership structure. The tender is called "Transmission Lines — Stage I: Extra High-Voltage Line at 500 kV E.T. – Substation Rio Diamante – New Substation Charlone, Transformer Stations and complementary works of 132 kV" with the purpose of developing the construction, operation and maintenance of an Extra High-Voltage Line at 500 kV and other complementary works (the "PPP Transmission Project") and offers must be submitted by March 31, 2020. The new federal administration has not yet determined the future of said public tender.

The awardee of the PPP Transmission Project will enter into a 15-year term PPP agreement with the State-owned company *Integración Argentina S.A.*, which will be divided in two stages: (i) the construction stage, set for a maximum 36 months as from the execution of the PPP agreement; and (ii) the O&M services stage, comprising the period between the PPP Transmission Project's COD and the lapse of 15 years as from the execution of the PPP Agreement.

The Project will be financed through the "Individual PPP Electric Transmission Trust", which will be funded by (i) contributions to be collected by CAMMESA —which will be charged to users as from PPP Transmission Project's COD— and (ii) top up contributions made by the Federal Government in accordance with the terms of the contractual documents.

CAMMESA's Technical Procedures were amended to adapt them to the Argentinian PPP regulatory framework and include the "Independent PPP Transmission Company" figure.

16.6 Renewable Energies

Law No. 26,190, passed in 2006, approved the creation of a National Regulatory Framework for Renewable Energies. This law, as amended in 2015, has set a target of getting 12% of the power consumed in the country from renewable sources (e.g., wind, solar, geothermal, biomass, biofuels) by December 2019 and 20% by December 2025, with sequential targets in between. Law No. 26,190 provides tax and customs incentives for renewable power generation projects.

To meet the targets of Law No. 26,190, the former Ministry of Energy and Mining instructed the CAMMESA to launch a public tender in July 2016, called the RenovAr Program, to award long-term PPAs for renewable power. Under these PPAs, CAMMESA acts as the off-taker, prices are denominated in US dollars, and the awarded projects get access to the tax and customs benefits provided by Law 26,190. The off-taker's obligations under the PPA are secured by a public trust called FODER. Awardees may also opt for a World Bank Guarantee as a second-tier security to FODER under certain PPAs termination events.

In Round 1 of RenovAr, 29 renewable projects were awarded PPAs for a total installed capacity of 1,142 MW.

Following the impressive response to RenovAr Round 1, RenovAr Round 1.5 was launched in October 2016. In this opportunity, companies with solar and wind projects that had been pre-qualified under RenovAr 1 but not awarded a PPA were invited to present new offers. In RenovAr Round 1.5, 30 projects were awarded PPAs for a total installed capacity of 1,281 MW. All PPAs awarded under RenovAr 1 and 1.5 have been already executed and most of these projects are either operating or under construction.

In August 2017, the former Ministry of Energy and Mining launched RenovAr Round 2 for 1,200 MW of installed capacity divided between (a) solar, (b) wind, (c) biomass, (d) biogas, and (e) small hydropower plants. Under this round, 88 PPAs were awarded, and, as of June 2019, 86 PPAs have already been executed.

In November 2018, a third RenovAr round named "MiniRen" was launched for 400 MW to be connected to mid-voltage lines of 13,2 kV, 33 kV and 66 kV. The available capacity must be distributed between solar and wind (350 MW), biomass (25 MW), small hydropower plants (10 MW), biogas (10 MW), and landfill biogas (5 MW).

This round provides a power capacity cap of 0.5 to 10 MW per project and of 20 MW per province, except for the Province of Buenos Aires, whose capacity cap is of 60 MW. In addition, this round does not allow for the capacity expansion of existing plants.

In August 2019, within the MiniRen round, the Under Secretary of Renewable Power and Power Efficiency awarded 380 PPAs for approximately 260 MW and invited 12 additional projects to file new offers.

In addition, the regulations for implementing renewable corporate PPAs have been approved by means of Resolution No. 281/2017 of the former Ministry of Energy and Mining, which set the marketing and administration charges applicable to Large Users which buy power from CAMMESA. This rule also authorizes generators and Large Users to negotiate the terms and conditions of their PPAs (establishing priorities, term, prices, etc.) and establishes a specific dispatch priority for renewable PPAs. Many corporate renewable PPAs have been executed since Resolution No. 281/2017 was issued.

16.7 Renewable Distributed Generation

In December 2017, the Argentine Congress enacted Law No. 27,424 which created the Regime for the Promotion of Renewable Distributed Generation. This framework provides a series of tax benefits and incentives in order to promote the installation of renewable distributed generation equipment.

Renewable distributed generation consists in the low capacity power generation from renewable sources, which is connected to the grid with the main purpose of self-supplying electricity with the option to inject the power surplus, if any, into the grid. Those who carry this activity are defined as Users-Generators under Law No. 27,424.

Law No. 27,424 included a net metering tariff system, pursuant to which the Users-Generators compensate the power they consumed against the power they generated with the relevant distribution utility company. The distribution company must deduct the applicable surpluses when power generation outbalances power consumption from the electricity bill. The injection tariff must be determined by the implementing regulations to be enacted, which is currently pending.

Law No. 27,424 also created two public funds — the Renewable Distributed Generation Fund (the "FODIS" after its Spanish acronym) and the Promotion of the National Production of Systems, Equipment and Supplies for Distributed Generation (the "FANSIGED" after its Spanish acronym) with the purpose of implementing a renewable distributed generation promotion system which allows the application of financing mechanisms for the installation and production of renewable distributed generation related equipment and supplies.

Renewable distributed generation is a high potential industry which, combined with the measures described in this chapter, is expected to facilitate the relaunch of the electricity sector.

Oil & Gas

Salinas Grandes (Salt Flats), Salta

17.1 Overview

Argentina is a major player in the South American hydrocarbon market. According to the 2019 edition of the BP Statistical Review of World Energy, Argentina is the largest producer of natural gas and the fourth largest producer of crude oil in South America. Hydrocarbons, especially natural gas, have historically accounted for a large portion of the Argentine energy matrix.

Until recently, hydrocarbon production and reserve rates had been falling, forcing the country to import increasing volumes of natural gas and LNG, as well as crude oil and liquid fuels. As a result of governmental promotion in recent years, production has recovered, and Argentina seems to be on the path towards self-sufficiency once more.

Moreover, recent reports announcing that Argentina has among the largest volume of shale gas reserves in the world have had a groundbreaking impact on Argentina's position as a global energy player. According to the US Energy Information Administration and Advanced Resources International, Argentina has the second-largest shale gas resources (802 Tcf) and the fourth-largest shale oil resources (27 billion barrels) in the world.

More than 50% of these unconventional resources are located in the Neuquén Basin. In addition to its favorable geology, the Neuquén Basin has attributes that favor unconventional development (i.e., a long history of oil and gas operations, an established and thriving service sector, and good access to domestic and international markets).

17.2 Ownership and Jurisdiction over Hydrocarbons

Hydrocarbon resources are severable from the general ownership of property. According to the Argentine Constitution, as amended in 1994, natural resources, including hydrocarbon reserves, belong to the provinces where they are located. Nevertheless, the Argentine Constitution empowers the Argentine Congress to legislate on hydrocarbon matters.

The transfer of hydrocarbon resources from the federal domain to the provinces was implemented in 2006 through Law No. 26,197. The resources transferred were those located in the provinces and territorial waters of up to 12 nautical miles from a baseline, which in Argentina is the mean low-water line along the coast. With Law No. 26,197, the enforcement of the exploration permits and production and transportation concessions, granted by the Argentine Government over these resources prior to the law was transferred to the provinces. The provinces have since handled the granting, enforcement, control and extension of permits and concessions within their territories.

Offshore resources 12 nautical miles beyond the baseline are in the federal domain and subject to exclusive federal jurisdiction.

17.3 Exploration & Production

Federal Hydrocarbons' Law No. 17,319 of 1967, as amended (the "Hydrocarbons' Law"), and several subsequent dispositions have established the basic legal framework for exploration and production (E&P) activities. The Secretariat of Energy of the Ministry of Productive Development (the "Secretariat of Energy") is the enforcement agency of the Hydrocarbons' Law at the federal level. In each oil-producing province there is an agency responsible for hydrocarbon matters.

The main goals of the latest amendment to the Hydrocarbons' Law, approved in 2014 through Law No. 27,007, are to provide specific rules for the exploration and development of unconventional resources, the extension of current concessions and the granting of new permits and concessions.

Hydrocarbon exploration, development and production require an exploration permit, or a production concession granted by the Argentine Government or a province, depending on the location of the reserves. Exploration permits and production concessions must be granted through a competitive bidding process and may be transferred with the grantor's approval.

To become the holder of a permit or concession, companies must register with the oil companies' registry kept by the Secretariat of Energy and, in some cases, the corresponding provincial authorities. Registration is granted on the basis of meeting certain financial and technical standards.

The Hydrocarbons' Law allows onshore and offshore surface reconnaissance activities such as geological and geophysical studies, including seismic survey, but excludes drilling. For this purpose, a government authorization from the federal or provincial agency, as the case may be, is required. In the case of offshore areas subject to federal domain and jurisdiction (beyond the 12th mile), the authorizations can be granted without a public bidding process for up to 8 years over areas not subject to exploration permits or production concessions and they allow neither exclusivity rights nor prevent the granting of permits or concessions within the area covered thereby. The authorizations allow their holders to acquire new data and process existing information corresponding to the area covered by the authorization. All information acquired under an authorization must be disclosed to the government and belongs to the holder of the authorization and to the government. During the tenure of the authorization and for 2 years thereafter, the holder of the authorization is allowed to disclose and market the information on a transparent and non-discriminatory basis. After this period, the government will be allowed to freely disclose the information.

Exploration permits allow their holders to do exploration and usually require a minimum investment in that activity. The base term of a permit for conventional exploration is divided into two periods of up to three years each, plus an extension of up to five years. For unconventional resources, the base term is divided into two four-year periods, plus an extension of up to five years. In the case of offshore exploration, the base term is divided into two periods of up to four years, plus an extension of up to five years. At the end of the first period of the base term, the permit holder may choose to (i) revert 100% of the area included in the permit or (ii) keep the entire area and enter into the second period of the base term. At the end of the base term, the holder may choose to extend the term of the permit, subject to reverting 50% of the area.

A permit holder that discovers a commercially exploitable reservoir is entitled to a production concession to develop it. The term of a conventional production concession is 25 years; while, concessions for the development of unconventional resources are granted for a term of 35 years. Unconventional production concessions allow conventional exploration and production as ancillary activities subject to the payment of a production bonus and an additional royalty of 3%. Offshore production concessions are granted for a term of 30 years. In all cases, the concessions may be extended for successive 10-year periods.

For production concessions, unconventional hydrocarbon production is defined as the extraction of oil and gas through unconventional stimulation techniques applied to deposits in geological formations

characterized by the presence of rocks with low permeability. These include the following: shale or slate rocks (i.e., shale oil and shale gas, compact sandstones); tight sands, tight oil and tight gas, and layers of coal (e.g., coal bed methane).

Holders of permits and concessions are required to pay royalties to the grantor (i.e., the federal or the provincial government) at a 15% rate for exploration permits and at a 12% rate for production concessions. Royalties are increased by 3% each time a concession is extended, up to a maximum of 18%. Royalties may be lowered to 5% under exceptional circumstances. Permit holders and concessionaires must also pay the grantor a surface canon based on the acreage of the permit or concession.

Authorizations permits and concessions can be totally or partially assigned with the prior approval of the corresponding federal or provincial agency.

17.4 Offshore

Offshore activities up to the 12th mile are subject to provincial jurisdiction. Hydrocarbons found beyond this limit, belong to the Argentine Government and are subject to exclusive federal jurisdiction, meaning that authorizations, permits and concessions are granted, controlled and administered by the federal government.

Pursuant to the Hydrocarbons' Law, offshore exploration permits must be granted through public bidding.

In 2019, the federal government awarded 18 offshore exploration permits in the first bidding round held after nearly 3 decades, covering roughly 225,000 km2 and attracting bids from 13 companies like Equinor, ExxonMobil, Eni and Total, with winning bids of more than USD 718 million.

Exploration permit's periods and surface retention were consistent with the existing regulatory framework. Bids were made on committed minimum working units for the first exploration period and will include the obligation to drill at least one well in each of the second and extension periods, should the permit holder choose to proceed to these periods.

The benefits provided by Law No. 27,007 and Decree No. 929/13 (see section 17.8) will be available to hydrocarbons produced under concessions acquired under exploration permits awarded in this auction and may enjoy a reduction of royalties of up to 50%.

Further rounds were announced by the previous government to award exploration permits that will cover the Northern Argentina and the Colorado basins.

17.5 Midstream

The transportation of hydrocarbons through pipelines requires a concession or a license from the Argentine Government or a province, depending on whether the relevant pipeline system crosses into another country or runs across two or more provinces, or is limited to the territory of a single province. These permits can be obtained via two different regulations: the Hydrocarbons' Law, which applies to all hydrocarbons, and the Natural Gas Law No. 24,076 (the "Natural Gas Law"), which is applicable exclusively to natural gas transportation and distribution.

Under both frameworks, transportation services are defined as a public service and, therefore, cannot be curtailed or interrupted by the carrier except if there is a "force majeure" event or other event that affects the operating conditions of the transportation facilities. The services are also subject to open access and regulated tariffs.

17.5.1 Transportation under the Hydrocarbons' Law

The holder of a production concession is entitled to obtain a concession to transport its production of hydrocarbons, including natural gas, crude oil and liquids. In these cases, the transportation concession is granted for the same term as that of the related production concession: 25 years for a conventional concession or 35 years for a concession for production of unconventional resources. These concessions may be extended for additional and successive 10-year terms.

Other transportation concessions under the Hydrocarbons' Law must be granted through a bidding process and for a 35-year term that may be extended for successive 10-year periods.

Pursuant to Federal Decree No. 44/1991, as amended by Decree No. 115/2019, transportation facilities operated under concessions granted according to the Hydrocarbons' Law are subject to open access and maximum regulated tariffs adjusted every five years. Under extraordinary circumstances, tariffs' adjustments have been postponed protecting customers.

However, in the case of new pipelines or increased capacity built after February 2019, transporters are allowed to negotiate freely the terms and conditions, including prices, of firm contracts.

17.5.2 Natural Gas Transportation and Distribution under the Natural Gas Law

Argentina has five main high-pressure gas pipelines, which are divided into two systems based on geography: north and south. Both of the systems are designed to have access to gas sources and the main centers of demand, including Greater Buenos Aires.

The gas distribution networks are divided based on geography into nine systems.

Each of the transportation and distribution systems is operated under a license granted by the Argentine Government in accordance with the Natural Gas Law, which governs the transportation, storage, marketing and distribution of natural gas and defines transportation and distribution as public services. This means that transportation and distribution services must be provided on an open access and non-discriminatory basis and are subject to regulated tariffs.

This law establishes several restrictions on cross ownership for companies operating in different segments of the gas industry, including producers, distributors, large consumers, transportation companies and marketers. ENARGAS is the enforcement agency of the Natural Gas Law.

Given the country's shortfall of natural gas production to meet domestic demand, the transportation and distribution of gas is subject to a special regulatory regime aimed at satisfying the demand of protected consumers (i.e., homes and small businesses). Under this regime, natural gas producers must allocate a set volume of natural gas to meet the demand of protected customers. The delivery of gas to other customers (i.e., natural gas vehicles and industries) is permitted when the demand of protected customers is met.

The "Law of Social Solidarity and Productive Reactivation within the Public Emergency" No. 27,541 entrusted the Argentine Executive with the restructuring of the energy tariff scheme following distributive equity and productive sustainability principles and the reorganization of the federal gas and power regulatory agencies, to guarantee an efficient administration.

This law froze natural gas transportation and distribution tariffs for a 180-day term and authorized the Argentine Executive to renegotiate said tariffs to reduce their burden on homes and companies during 2020 and to intervene in ENARGAS for a 1-year term.

17.5.3 Natural Gas Storage

Natural gas and LNG storage, liquefaction and regasification are regulated by ENARGAS Resolution No. 722/2019. According to this resolution a license from the ENARGAS is required to perform these activities and the facilities where they are performed must be approved by this agency.

17.6 Downstream

Hydrocarbon-refining activities are subject to Law No. 13,660 of 1949, which provides the basic regulatory framework for these activities, whether done by oil producers or third parties.

Refining activities are subject to registration requirements established by the Secretariat of Energy. In addition to federal rules, refining activities must comply with provincial and municipal regulations on technical and safety standards.

The Secretariat of Energy is responsible for setting the technical requirements that fuels marketed for consumption in the country must comply with. Recent changes approved by this agency were motivated by the need to adapt the current refining facilities to unconventional crude oil and improve environmental standards.

17.7 Market Regulation

Domestic prices of crude oil and retail prices of liquid fuels are traditionally adjusted on the basis of ongoing negotiations among oil producers and refiners sponsored by the Argentine Government. Under extraordinary circumstances (e.g. a material devaluation of the local currency), the Government has implemented emergency mechanisms to protect customers against the increase of fuel prices.

While natural gas prices for industries can be freely negotiated, the supply for power generation and residential customers remains partially subject to some degree of indirect state intervention.

The export of crude oil and liquid fuels is allowed, provided that the local market is fully supplied.

In the case of natural gas, different types of export authorizations can be obtained: firm, interruptible, operative swaps and assistance agreements. In all cases natural gas exports are conditional upon the supply to the domestic market being secured. Hydrocarbon exports are subject to an 8% duty.

Unlike natural gas, the import of crude oil and liquid fuels requires prior governmental approval. The import of hydrocarbons is not subject to duties.

17.8 Incentive Programs

Direct investment projects in hydrocarbon exploration and production at a minimum of USD 1 billion over a five-year term or of USD 250 over a three-year period are eligible for the benefits provided by Decree No. 929/13 and Law 27,007.

The benefits of this program include: (i) the right to export a portion of the hydrocarbons produced by the project; (ii) the right to export those hydrocarbons free of export duties, or at a 0% rate; (iii) the right to freely dispose of the foreign-currency proceeds from the export deal; and (iv) in the event that there is a shortfall of hydrocarbons in Argentina and exports are restricted to meet local demand, the exporter will be entitled to international prices for the hydrocarbons that could have been exported but were not. In such case, a compensation mechanism for payment in local currency will be established, and producers will have a priority right to acquire foreign currency in the official exchange market up to the

total amount of the local currency obtained in exchange of the hydrocarbons prevented from export, including the amounts collected for their sale in the domestic market plus any compensations received under the above mechanism.

The benefits of this regime can be enjoyed as from the third or fifth year, depending on the abovementioned investment amounts of the projects and applies to 20% of the production in the case of onshore projects and up to 60% for offshore projects (if the depth of the wells is of at least 90 meters).

Another benefit for the oil and gas sector is a reduction on the duties for importing capital goods and supplies essential for investment projects.

The federal government announced that in the first quarter of 2020 will submit a bill to the Argentine Congress with the aim of setting up a promotional framework for the hydrocarbon industry to foster investments in this sector.

17.9 Environmental Regulations

While the provinces have the power to legislate and regulate environmental matters, provincial environmental regulations must set standards equal to or higher than those approved by the Argentine Congress.

Most of the hydrocarbon-producing provinces have issued specific environmental regulations for the oil industry, including unconventional operations.

Based on the latest amendment to the Hydrocarbons' Law, the Argentine Government and the provinces must work towards enacting a uniform environmental legislation for the oil industry with the purpose of implementing best practices for environmental hydrocarbon management for exploration, production and transport.

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Telecommunications

Argentine National Congress, Buenos Aires

18.1 Main Regulatory Framework

Information and Communications Technologies Services ("ICT Services") provision in Argentina is mainly ruled by the Argentina Digital Law No. 27,078 (the "Information and Communications Technology Law", or the "ICT Law"), which was approved on December 16, 2014.

The ICT Law provides a set of definitions, general rules and market standards for the provision of ICT Services, as explained in Section 18.3. It also covers rights and obligations for ICT Services providers including licensing regime, interconnection ruling, fees, obligations and a sanctions regime.

Whereas the ICT Law states that telecommunication services must be considered an activity of public interest, it also denotes that the only one considered as public service is the Basic Telephone Service.

18.2 Control Authority

With the aim of controlling the compliance of the provisions established in the ICT Law and the complementary applicable regulations, on January 4, 2016, the Necessity and Urgency Decree No. 267/2015 ("Decree 267"), was issued by the Executive.

Decree 267 has: (i) partially amended the ICT Law and the Audiovisual Communications Services Law No. 26,522 (the "ACS Law"); (ii) created the Argentine Communications Agency (the "ENACOM" after its acronym in Spanish) as a new control authority replacing the former authorities (the "AFTIC" and the "AFSCA" after their acronyms in Spanish) in charge of the telecommunications and audiovisual communications industry; and (iii) created a special commission in order to draft a unified and updated law to replace the ICT and ACS laws.

Additionally, Decree 267 authorizes ICT licensees to provide audiovisual communications services, except for satellite services. Conversely, licensees of audiovisual communications services can provide ICT services. However, Decree 267 established a temporary restriction on providing broadcasting subscription services for telco companies with licenses for (i) specific basic landline telephony and (ii) mobile communications. Decree No. 1340/2016 established that those licensees would be able to start providing such services as from January 1, 2018, within Greater Buenos Aires and the cities of Rosario, (Province of Santa Fe) and Córdoba (Province of Córdoba). Additionally, ENACOM Resolution No. 5641/2017 extended the start date to provide those services by the licensees until January 1, 2019, for the rest of Argentina, (with some exceptions, depending on the quantity of inhabitants and the presence of an operator with more than 700,000 users).

18.3 Key Issues

As of today, Decree No. 764/2000 is only applicable with respect to the Rules of Administration, Management and Control of the Radio Spectrum. The ENACOM has issued new Licensing Rules for ICT Services, Interconnection and Access Rules, and for the Universal Service contributions. The main aspects of said rules are described below.

18.3.1 Licensing Rules for ICT Services

In accordance with the ICT Law and the Licensing Rules for ICT Services approved under Annex 1 of Resolution No. 697-E/2017 of the Ministry of Modernization (the "Licensing Rules"), only one class of country wide license for the rendering of ICT Services is established, which authorizes the provision to the public of any ICT service, fixed or mobile, wired or wireless, national or international, with or without its own infrastructure. The ICT Law contemplates a unique license called *"Licencia Única Argentina Digital"* (the "ICT License"). Therefore, ICT services may only be provided after a license has been granted, and only with regards to the specific registered services under such license.

There are no restrictions on foreign investment in the telecommunications market, other than those established for providers of internet access services by Law No 25,750 (the "Media Ownership Law") of June 18, 2003. For further information, see Section 18.4 below. Foreign companies must be registered at least as a local branch with the local Public Registry of Commerce to apply for a telecommunications license.

A monthly fee for the control, monitoring and verification of services is compulsory and must be paid to the ENACOM by the ICT Licensees. Said fee is equivalent to 0.5% of the total revenues earned from the provision of ICT services, net of taxes and fees charged.

18.3.2 Universal Service General Rules

ENACOM Resolution No. 2,642/2016 approved the new Universal Service General Rules, replacing prior regulations on this matter.

Universal Service is the set of services and programs, variable in time and defined by the government, provided so that the whole population has access with a certain quality and affordable prices, regardless of their location, social and economic inequalities, and physical disabilities.

Each telecommunications services provider is obliged to contribute to a fiduciary fund created to finance Universal Service. The contribution is equivalent to 1% of the provider's total income from the provision of telecommunications services, minus taxes and fees.

18.3.3 Interconnection and Access Rules

ENACOM Resolution No. 286/2018 establishes that telecommunications service providers are required to grant interconnection to other telecommunications service providers on a non-discriminatory, transparent and proportional basis, and based on objective criteria. The parties may agree on specific interconnection terms and conditions.

18.3.4 Rules of Administration, Management and Control of the Radio Spectrum

The rules of the administration, management and control of the radio spectrum determine that the radio spectrum is an intangible, scarce and limited resource that must be administrated exclusively by the Argentine Government.

18.3.5 Rights-of-Way/Tower Siting

Since Argentina is a federal state, each province and municipality may enact its own regulations on public law. Subsequently, each province and municipality has its own regulation on tower siting/rights-of-way.

Despite the latter, the Argentine Supreme Court ruled that regulation on tower siting must not interfere with the necessary infrastructure deployment for the provision of the intended ICT Service, which is governed by federal rules.

18.3.6 Passive Telecommunications Infrastructure

According to Decree No. 798/2016, partially amended by Decree No. 1,060/2017, and the Licensing Rules, independent companies sharing passive telecommunications infrastructure (e.g., towers) do not require an ICT services license to carry out their activity, as long as they do not discriminate and meet the applicable local regulations for tower siting. These companies must be registered before the ENACOM as an Independent Operator of Passive Infrastructure and notify the ENACOM that they have commenced renting their infrastructure and register the rented infrastructure in a special registry named “One-Stop Window System for the Installation of Antennas” created by the ENACOM Resolution No. 423/2019.

18.3.7 Spectrum Use Authorization

In Argentina, the usage of spectrum for ICT Services provision requires an ICT License and a technical frequency authorization to be granted. Thus, obtaining an ICT License does not mean that the ENACOM guarantees the availability of the required resources (e.g., frequency channels) for supporting the requested service.

The telecommunications licensee is allowed to decide which technology and infrastructure it requires for providing services, as long as it complies with the technical standards set forth by the ENACOM as detailed in Section 18.3.8. Any request for frequency authorization must be submitted to the ENACOM for approval, based on a full telecommunications project. This includes but is not limited to point-to-multipoint-link studies, interference analysis, site locations, radiated power, antenna gains and types, etc.

18.3.8 Telecommunications Equipment

A company importing or manufacturing telecommunications equipment must be registered before the ENACOM’s Registry of Telecommunications Activities and Materials (the “RAMATEL”, after its acronym in Spanish). The device must also be technically approved by the same special registry for its commercialization.

Telecommunications equipment is approved by the ENACOM, and testing should be done locally. The ENACOM controls the quality and technical standards of the equipment used for telecommunications.

18.4 Transfer of License or Change of Control

According to Section 13 of the ICT Law, as amended by Section 8 of Decree 267, and Section 14 of the Licensing Rules for ICT Services, the parties are permitted to close a transaction that implies (i) a direct or indirect change of controlling quota/shareholdings in an Argentine ICT company or (ii) the transfer of an ICT License (the “Telco Transaction”) prior to obtaining the ENACOM’s approval provided that the Telco Transaction is subject to ENACOM’s ad-referendum post-closing approval.

The parties are required to give notice of the Telco Transaction to the ENACOM submitting a request for its approval within 30 days as of its closing. Said approval may either be granted explicitly or be deemed approved if the ENACOM does not expressly reject the transaction within 90 days from the submission of the request for approval.

The latter is mandatory as the implementation of a Telco Transaction without the ENACOM’s explicit or deemed approval will be subject to revocation of the license by the ENACOM. If the license is revoked, the licensee or any of its affiliates will not be able to (i) continue providing an ICT Service; nor (ii) obtain a new ICT services license during the year following the revocation of such license.

18.5 Mobile Virtual Network Operators

ENACOM Resolution No. 38/2016 establishes the general rules that apply to a Mobile Virtual Network Operator licensee (“MVNO”). Mobile Network Operators (“MNOs”) are obliged to submit a reference proposal to the MVNOs with details of the conditions and prices of the services and facilities to be provided to the MVNOs on an annual basis.

The MNOs must also offer the MVNOs any new services and technologies they offer to their users.

18.6 Non-licensed frequencies

Ministry of Modernization Resolution No. 581/2018, complimented by ENACOM’s Resolution No. 4653/2019, declared the following frequency bands (expressed in MHz) as shared use frequency bands: 915-928, 2400-2483.5, 5150-5250, 5250-5350, 5470-5600, 5650-5725, 5725-5850 and 57000-71000. These bands may be used by users or service providers without previous authorization. Despite the latter, the provision of ICT Services in shared use bands requires obtaining an ICT License and the registration of the corresponding ICT Service. Said ICT Service providers must additionally inform the ENACOM the geographic coordinates and height of the antennas that will be installed for the provision of said services.

Broadcasting

Intersection of Corrientes Ave. and 9 de Julio Ave, Buenos Aires

19.1 Main Regulatory Framework

The provision of broadcasting services in Argentina is mainly ruled by the Audiovisual Communication Services Law No. 26,522 (the "ACS Law"), which was approved by the Argentine Congress on October 10, 2009.

The ACS Law includes a set of definitions, general rules and market standards for the provision of audio-visual communications services, as explained in Section 19.3 below. It also covers rights and obligations for audiovisual communications services providers including licensing regime, content and advertising rules, fees and a regime for sanctions.

19.2 Control Authority

AS mentioned above, Decree 267 (i) partially amended the ICT Law and the ACS Law; (ii) created ENACOM replacing the former authorities in charge of the telecommunications and audiovisual communications industry; and (iii) created a special committee to draft a new unified and updated law to replace the ICT and ACS laws.

The ACS Law states that audiovisual communications services are an activity of public interest. It also includes regulations for advertising agencies, content producers and television channels.

19.3 Key Issues

19.3.1 Licenses

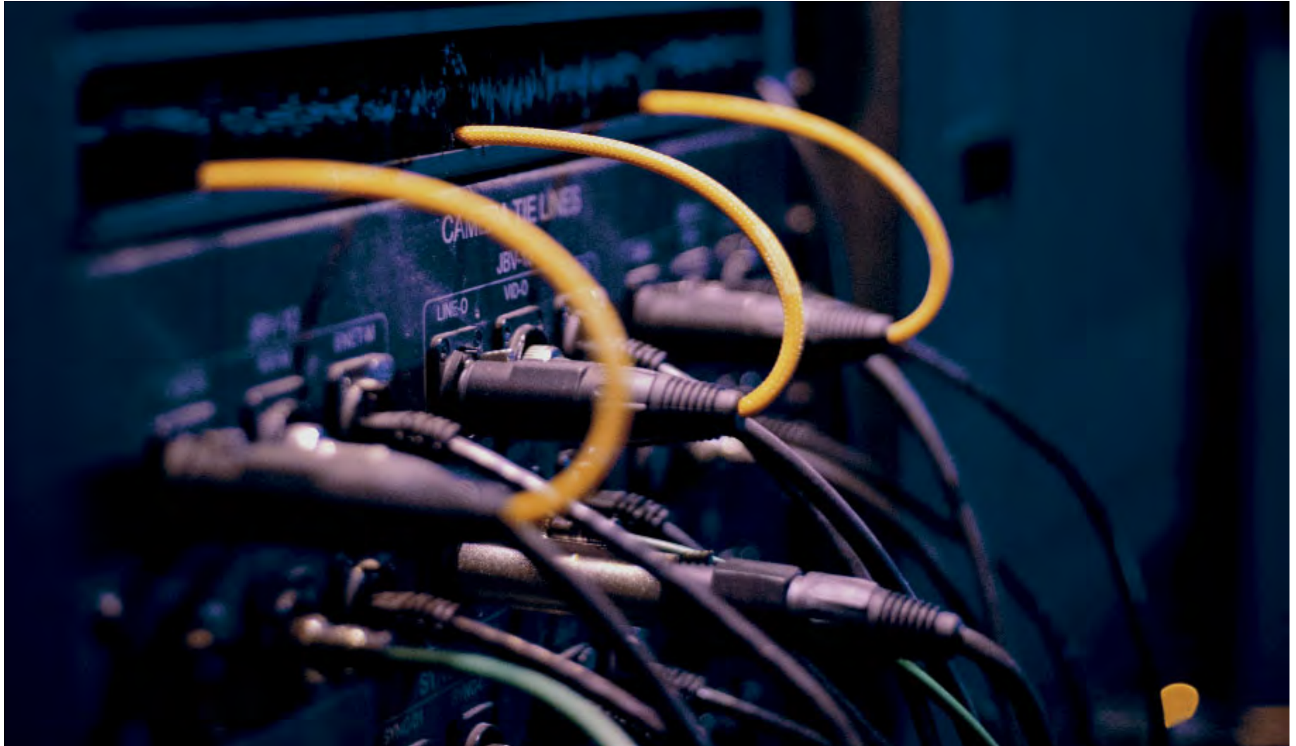
The ACS Law establishes certain requirements for individuals as licensees or shareholders of a licensee such as being an Argentine citizen or naturalized citizen with a minimum residence of five (5) years in the country, be of legal age and be able to demonstrate the origin of the funds committed to the investment to be made, and not being incapacitated or disqualified under civil or criminal law, among others.

In the case of legal entities, the restrictions on foreign investment described in19.3.6 below apply

Non-satellite licenses for using the radio spectrum will be awarded through an open and permanent bidding process. The Argentine Executive Branch will award licenses for providers whose primary service area is greater than 50 km and have more than 500,000 inhabitants. The ENACOM will award through a bidding process the rest of the open services that use non-satellite radio links.

19.3.2 Incompatibilities

The licensee company and its shareholders cannot hold directly or indirectly 10% or more of the shares with voting rights in a legal entity or corporation that it is a public service provider under a national, provincial or municipal license, concession or permit. The restrictions on public service providers do not apply to non-profit organizations.



19.3.3 Capital of the Licensees

Licensed companies may not issue shares, bonds or any other negotiable instruments without ENACOM's authorization when such transactions involve more than 30% of the company's equity. Shares of companies providing open air or paid audiovisual communications services may be listed on the stock market up to a maximum of 45% of the voting capital.

19.3.4 Limitations to Multiple Licensing

The ACS Law includes certain limitations on multiple licensing:

(I) At a national level:

- **a)** Up to one license for satellite broadcasting. A holder of this license cannot apply for any other audiovisual communications or ICT services license.
- **b)** Up to 15 licenses for radio or open air television services.

(II) At a local level:

- **a)** Up to one license for AM radio.
- **b)** Up to one license for FM radio or two licenses for FM radio if there are more than eight licenses in the same primary services area.
- **c)** Up to one license for open air television services.

In no case may a holder have more than four licenses in the same primary service area.

19.3.5 Term of Licenses

According to the ACS Law, audiovisual communications licenses are valid for ten (10) years as of the granting date with a possible extension for another five (5) years, which can be automatically granted upon request to the ENACOM. The ENACOM may grant subsequent renewals for 10-year periods. However, the applicable National Authority may call a bidding process for granting new licenses.

19.3.6 Restrictions on Foreign Investment

The ACS Law, in line with other previous laws such as Media Ownership Law No. 25,750 (more details are available in Section 19.4 below), puts restrictions on the relationship of individual and company licenses with foreign companies. These include the following:

(I) They must not have a legal corporate tie or be directly or indirectly controlled by a foreign audiovisual communications company. Non-profit companies, their directors and counselors cannot have direct or indirect associations with foreign audiovisual communications companies or domestic or foreign telecommunications companies in the private commercial sector. It must be proven that the source of funding of the entity is not directly or indirectly associated with these foreign companies;

(II) They must not be affiliates or subsidiaries of foreign companies nor may they perform acts or enter into contracts that allow a dominant position of foreign capital in the management of the licensee;

(III) Foreign equity participation of up to 30% of the share capital with voting rights is allowed, as long as such participation does not result in direct or indirect control of the company.

The limitations set out in the above points **(I)** and **(II)** will not be taken into account when international treaties to which Argentina is a party establish effective reciprocity in the activity of audiovisual communications services. The 30% foreign participation cap may be increased by virtue of the reciprocity conditions agreed on between Argentina and the foreign country where the foreign investor is based. Reciprocity is based on the rights that the law of the country where the investor is based allows an Argentine investor to participate in broadcasting companies.

19.3.7 Cable Television Services

According to Decree 267, licenses for the exploitation of physical link and radio-electric link subscription cable television services have been renamed as "Registrations" of a Unique Argentine Digital License (*Licencia Única Argentina Digital*). They are governed by the ICT Law in accordance, principally, with the legal framework described under Section 17 for telecommunications above.

19.3.8 Registries

Several registries have been created to control the different actors of the communications sector, such as the Public Registry of Licenses and Authorizations, the Public Registry of Channels and Producers and the Public Registry of Advertising Agencies and Advertisement Producers.

19.3.9 Content Regulations

Private audio broadcasting services must broadcast a minimum of 70% of domestically produced content and a minimum of 30% of music of domestic origin for every day of transmission. A minimum of 50% of self-produced content (directly produced by the licensees), including news programs or local newsreels, is also required.

Open television network services must broadcast a minimum of 60% of domestic productions. A minimum of 30% of the content must be self-produced, including local news programs and an equal percentage of independent local productions in cities of more than 1.5 million inhabitants. For localities of more than 600,000 inhabitants, the minimum is 15%, and for all other localities it is 10%.

19.3.10 Advertisements

Advertisements must be domestically produced when broadcasted on open broadcasting services or on channels owned by subscription services licensees, or when advertised in domestic channels. The regulations incorporated the possibility of including ads of foreign origin in these media if the advertiser or advertising agency can provide evidence of reciprocity conditions to the ENACOM between Argentina and the country where the ad is sourced.

The ACS Law also rules on other aspects of ads to be aired by broadcasting licensees, such as time limits for broadcasting ads, special content, and the obligation of registering the advertising agency or the direct advertiser before the corresponding ENACOM registry.

19.3.11 Taxes

The owners of audiovisual communications services must pay a tax proportional to the amount of the turnover from the commercialization of traditional and non-traditional ads, programs, channels, content, subscriptions, and any other concept deriving from the exploitation of such audiovisual communications services. The tax varies between 0.5% and 5%, depending on the service and the number of inhabitants in the service area.

Channels must also pay this tax at a rate of 5% when the broadcasted signal is foreign and at a rate of 3% when local.

19.4 Transfer of License or Shares in a Licensee

According to Section 41 of the ACS Law, as amended by Section 16 of Decree 267, the parties are allowed to close a transaction that implies (i) the transfer of an audiovisual communications licenses; or, (ii) a direct or indirect transfer of shares in an audiovisual communications service company (a "Media Transaction") prior to obtaining the ENACOM's approval provided that (a) the Media Transaction is subject to the ENACOM's ad-referendum post-closing approval; and (b) the purchaser provides evidence to the ENACOM of the fulfillment of all regulatory requirements for becoming the owner or shareholder of such license or company, in accordance with the terms and conditions of the corresponding audiovisual communications license.

The parties are required to submit the request to the ENACOM for approval within 30 days of closing the Media Transaction. Said approval may be granted explicitly or be deemed approved if the ENACOM does not expressly reject the transaction within 90 days from the submission of the request for approval

The implementation of a Media Transaction without the ENACOM's explicit or deemed approval will be subject to revocation of the license by the ENACOM.

19.5 Media Ownership Law

Cultural Media Law No. 25,750 (the "CML") establishes certain restrictions on the participation of foreign investors in "communications media companies" to 30% of the entity's voting capital stock. The CML provides that "communications media companies" include: (i) newspapers, magazines and publishing companies in general; (ii) broadcasting services under Audiovisual Communications Services Law No. 26,522 (open radio and TV stations and providers of DTH services); (iii) producers of audiovisual and digital content; (iv) internet access providers; and, (v) street advertisement companies.

The cap of 30% may be increased by virtue of reciprocity conditions agreed between Argentina and the foreign country where the foreign investor is based. The reciprocity is based on the chance that the law of the country where the investor is based gives to an Argentine investor the right to participate in communications media companies.

However, it is worth noting that precedents on the application and enforceability of the CML are very limited; in effect, according to available public information the only known cases in which this law has been applied are those related to companies operating open radio and TV stations.

19.6 Aspects related to Over the Top ("OTT") platforms providing audiovisual contents

As of this date, there is no regulation in Argentina related to OTT platforms providing audiovisual contents. Thus, in contrast with traditional linear TV services -governed by the ACS Law- and cable TV operators, which must obtain the corresponding license to provide audiovisual communications services, it is not necessary to obtain any special license or authorization from the regulatory authority to operate an OTT platform providing audiovisual contents.

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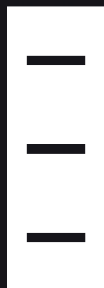

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