



Argentina

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1. Introduction

1.1 Background: Geography, Demography and Political System

1.1.1 Geography and Demography

The Republic of Argentina is comprised of 23 provinces and the Federal Capital: the Autonomous City of Buenos Aires. Located at the extreme south-east of the South American continent, Argentina is the eighth largest country in the world and the second largest in Latin America, covering some 3.8 million square kilometers (1.5 million square miles). Argentina has an estimated population of approximately 43 million people, of which 15 million live in the city of Buenos Aires and the greater Buenos Aires area. 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. The Argentine Constitution, adopted in 1853, provides in its present form for a tripartite system of government consisting of an executive branch headed by the President, a legislative branch and a judiciary.

The executive branch has been 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 Argentine Congress comprises two houses: the Senate and the Chamber of Deputies, which constitute the legislative branch. Congress has exclusive power to enact laws concerning federal legislation, including international and inter-provincial trade, immigration and citizenship, patents and trademarks. The Constitution entitles Congress to enact the codes concerning civil, commercial, criminal, mining, labor and social security matters, which are applicable throughout the country.

The judicial system is divided into federal and provincial courts, and each system has lower courts, courts of appeal and supreme courts. The supreme judicial power of Argentina is vested in the Supreme Court of Justice.

Each province enacts its own Constitution, elects its own governor and legislators, and appoints its own judges to the provincial courts.

1.2 The Argentine Civil and Commercial Code

On October 1, 2014, the Argentine Congress enacted Law No. 26,994 approving the Argentine Civil and Commercial Code, in force since August 1, 2015.

The new Civil and Commercial Code introduced many reforms that undoubtedly will have an impact on different economic activities:

- i) In the field of property law, which has a particular impact on the business world, it regulates the abusive exercise of rights (including abuse of dominant position) and 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 by means of the protection of collective incidence rights, public order rules within the framework of contracts and consumer rights, and the restrictive interpretation of adhesion contracts.
- iii) General rules applicable to all private legal entities regulate the responsibility of the individuals with management duties. Law No. 26,994 amended the Argentine Companies Law thus eliminating the distinction between civil and commercial companies.
- iv) Contractual negotiations are regulated, as well as the responsibilities derived therefrom, preliminary contracts and letters of intent, establishing a distinction between private instruments – signed by the parties – and the so-called “particular” instruments that are not signed but that in certain circumstances may be used as evidence.
- v) Contracts such as supply, agency, concession and franchise, 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 are regulated.
- vi) In connection with civil liability, the distinction between contractual and tort liability was eliminated and stress is made not only on damage compensation but on the prevention thereof. For this purpose judges are empowered to issue preventive measures and also dissuasive penalties where collective incidence rights are at stake.
- vii) Liability for property risk includes those who obtain a profit therefrom and whether the activity generating the damages may have been recognized by the administrative authority is irrelevant.
- viii) Regarding *in rem* rights the Civil and Commercial Code incorporates categories, such as surface rights, indigenous community property and real estate developments (country clubs, cemeteries, etc.), and also updated regulations on condominium ownership.
- ix) It introduced changes to the statute of limitations regime, setting forth as a general rule a shorter period (five years), and considers the forfeiture of rights on a separate basis.
- x) The Civil and Commercial Code 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 Civil and Commercial Code includes a broad scope of amendments, in comparison with the previous civil and commercial codes used for more than 140 years, and is based on the constitutional amendment that took place in 1994. It responds, in some cases, to modern conceptions of the law and introduces changes of criteria particularly within the contractual field. On other issues, it includes approaches given by case law or 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 appreciated as it is being 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 that establish the norms for choice of law and jurisdiction, legal treatment of foreign investors, monetary policy and foreign exchange. Under these circumstances, Argentina executed sixty bilateral treaties with different countries.

In general, foreign investors wishing to invest in Argentina, either by starting up new businesses or by acquiring existing businesses or companies, do not require prior government approval except for regulated areas or for general applicable regimes such as antitrust regulations. However, if a foreign company's investment consists of holding equity of an Argentine company, the foreign company must register with the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and comply with certain periodic reporting requirements. Please refer to paragraph 2.1.2 below for a more detailed description of these registration and reporting requirements, and to paragraph 6.5 below for a description of antitrust regulations.

Foreign investments are governed by the Argentine Foreign Investments Law No. 21,382 enacted in 1976, which has subsequently been subject to considerable amendment, with a view to liberalizing the regime applicable to them.

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

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 restrictions for U.S. investors. Furthermore, Law No. 25,750 enacted in 2003 eases that restriction by allowing up to 30% foreign ownership of Argentine broadcasting companies (however, because of lack of precedent, uncertainty remains as to its actual application). In addition, foreigners who wish to purchase land located in frontier and other security areas, or who have a controlling participation in a company owning such land, must obtain prior government approval, which is usually obtained.

Furthermore, all foreigners who wish to purchase land located in border and other security areas, or who have a controlling participation in a company owning such land, must obtain prior government approval, which is usually obtained. This is consistent with Law No. 26,737 enacted in December 2011, which imposes limits on the ownership or possession of rural land by foreign individuals or legal entities. For example, no more than 15% of the total amount of "rural lands" in Argentine territory may be owned or possessed by foreign individuals or legal entities. This percentage is also applicable to the territory of the province or municipality where the relevant lands are located. Under no circumstance may foreign individuals or legal entities of a same nationality hold or possess more than 30% of the above-stated 15%.

Lastly, Decree No. 820/2016 introduced the latest amendments in Law No. 26,737, allowing ownership by the same foreign owner to exceed one thousand hectares (1,000 Ha). This modification also eliminates restrictions located in land in "Industrial Zones", "Industrial Area" or "Industrial Park". Those lands are no longer considered to determine the hectares of rural land owned by a foreign person or entity.

1.3.2 Foreign Exchange Controls

Since the reinstatement of foreign exchange controls in December 2001, as a general rule, all transfers of foreign currency to and from Argentina must be made through an Argentine licensed financial entity or foreign exchange business (collectively, for this purpose, the “FX Market”). In addition, such transfers were subject to numerous restrictions and requirements set forth in the applicable foreign exchange regulations.

Notwithstanding the above, as from December 2015, the Central Bank of Argentina issued several communiqués (including but not limited to Communiqué “A” 5850, 5861, 5899, 6011 and 6037) that along with resolutions of other entities, introduced changes in the foreign exchange regime tending to more flexible regulations.

The description below of the impact of those regulations in certain transactions is just a summary intended to highlight the issues involved and by no means exhausts all rules that may be relevant to specific circumstances. The terms “Argentine resident” and “non-Argentine resident” used below refer to both individuals and companies. For purposes of Argentine foreign exchange regulations, a natural person or legal entity is a resident of a country when they have a center of economic interest in the territory of said country. It is presumed that a natural person is a resident of a country if he or she stays or has the intention of staying in the country for a year or more. In the case of legal entities, residency is presumed when a significant quantity of goods is produced or a significant amount of services is provided, for which the legal entity must maintain a productive establishment for a year or more.

While technically the Central Bank may grant, upon request, a special exemption from some of the restrictions described below, in practice it rarely does.

The rate of exchange in the FX Market is determined by market forces, but the Central Bank has the power to intervene by buying and selling foreign currency for its own account, a practice in which it engages on a regular basis.

As from December 2015, the ability of Argentine residents to purchase foreign currency through the FX Market for investment purposes (“*atesoramiento*”) was reinstated. Currently the FX Market is accessible for Argentine residents without requiring prior Central Bank approval to purchase unlimited foreign currency in all the institutions authorized to trade in the FX Market, provided that: (i) the transfer is performed to a local bank or a foreign bank account owned by the Argentine resident acquiring foreign currency; (ii) in the case of a foreign bank account, it must not be held in banks incorporated in countries or territories: (a) considered as non-cooperative countries for purposes of fiscal transparency, as provided for in Section 1 of Decree No. 589/2013; or (b) in which the Financial Action Task Force on Money Laundering (FATF) recommendations are not applied or deficiently applied.

1.3.2.1 Foreign Financings of Argentine Residents

As from December 2015, Argentine residents do not have the obligation to transfer to Argentina and sell for Pesos in the FX Market the foreign currency proceeds of foreign financings granted by non-Argentine residents. However, the transfer and sale of the currency in the local market is necessary in order for the debtor to repay principal or interest through the local FX Market.

Regardless of the method used for repayment (*i.e.*, whether repayment requires the purchase of foreign currency in the FX Market or not), principal can only be repaid 120 days after the proceeds have been sold in the FX Market (the “Mandatory Waiting Period”), unless the transaction qualifies for an exemption on account

of the type of financing (exemptions apply to international trade financings and listed debt securities offered publicly after June 2005).

1.3.2.2 Foreign Investments in Argentina

In general, foreign investments can be classified as “portfolio” or “direct” investments. Direct investments are participations in a local company of at least 10% of its ordinary shares or voting rights, as well as investments in real estate. Portfolio investments include, among others, participations in local companies below that cap, as well as holdings of Argentine currency, deposits in local banks, and debt securities of Argentine issuers.

For repatriation purposes, funds transferred to Argentina by non-Argentine residents for portfolio investments are subject to comply with the 120-day Mandatory Waiting Period. Additionally, the investor needs to provide evidence of the settlement of investment funds in FX Market.

For repatriation purposes, funds transferred to Argentina by non-Argentine residents for direct investments are no longer subject to compliance with the 120-day Mandatory Waiting Period. Additionally, the regulations removed the need for the investor to provide evidence of the settlement of the investment funds in the FX Market. Thus, there are no legal restrictions on the repatriation of the proceeds from the sale, liquidation or capital reduction of a direct investment, as long as the foreign beneficiary is an individual or legal entity incorporated or domiciled in jurisdictions considered to be cooperative for the purposes of tax transparency.

Argentine residents (whether companies or individuals) may freely purchase foreign currency and transfer it abroad to pay profits and dividends to non-Argentine shareholders, provided that the dividends correspond to closed financial statements certified by external auditors.

1.3.2.3 Foreign Trade

Argentine residents are required to bring to Argentina and sell for Pesos in the FX Market the foreign currency proceeds from the export of goods and services by the applicable regulatory deadline (which in the case of goods depends on the type of product). Currently, foreign currency proceeds received for services rendered to non-Argentine residents still have to be transferred to Argentina and converted into pesos, but the term to do so has been extended from 15 to 365 days.

Regarding the foreign currency proceeds from the exports made by oil, gas and mining companies, Decree No. 1722/2011 established the obligation to transfer into Argentina and liquidate in the FX Market the total amounts of such proceeds.

1.3.2.4 Derivatives

Currently, Argentine residents can enter into, and buy foreign currency with Pesos in the FX Market, to make payments abroad under derivative transactions with non-Argentine residents without prior Central Bank approval. Financial entities can only enter into those derivative transactions authorized by the applicable regulations. Derivative transactions executed between local parties, governed by Argentine law and settled exclusively in Pesos in Argentina do not require prior Central Bank approval.

1.3.3 Investment Protection and Promotion

In 1989, Argentina implemented the 1958 treaty entered into with the United States regarding the Overseas Private Investment Corporation ("OPIC"), which is an agency of the U.S. government that provides insurance to U.S. investments in developing countries. In 1990, Argentina became a member of the Multilateral Investment Guaranty Agency ("MIGA"), sponsored by the World Bank, 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 right to transfer foreign currency, expropriations or similar measures, breach of contract by the government of the host country, war and civil unrest, among other risks. Both agencies require prior approval regarding the legality of the investment and insurance coverage by the government of the host country.

In addition, in recent years Argentina has signed treaties for the promotion and protection of foreign investments with a number of countries, including 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 co-operation in trade and investment issues, most notably with the creation of the Mercosur Common Market ("Mercosur"), comprising Argentina, Brazil, Paraguay, Uruguay and Venezuela. Bolivia became a formal member in 2015. Mercosur calls for a gradual elimination of all tariff barriers between its members and a common external tariff with respect to the rest of the world.

On a global scale, 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.

2. Argentine Investment Vehicles

Law No. 26,994 which provides for the amendment and unification of the Argentine Civil and Commercial Codes also provides for the amendment to Argentine Companies Law No. 19,550 ("*Ley de Sociedades Comerciales*", "Argentine Companies Law"), among other laws. Consequently, Argentine Companies Law as amended becomes applicable to all type of companies, and is therefore renamed as General Companies Law ("LGS").

2.1 Principal Types of Business Entities

Foreign companies may conduct business in Argentina on a permanent basis. The alternatives are the appointment of a local commercial representative, the setting up of a branch, the incorporation of a local corporate entity (subsidiary) or the acquisition of shares of an existing Argentine company.

The main types of investment vehicle utilized by non-resident individuals and foreign companies are the branch, the corporation ("*Sociedad Anónima*") and the limited liability company ("*Sociedad de Responsabilidad Limitada*").

LGS now recognizes single shareholder corporations ("*Sociedades Anónimas Unipersonales*" or "SAU") as one of the types of corporate entities that can be adopted.

The basic characteristics of the branch, the corporation, the single shareholder corporation, and the limited liability company, according to Argentine law and the regulations of the *Inspección General de Justicia* of the City of Buenos Aires ("*IGJ*") 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 off-shore companies in the City of Buenos Aires has now 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 a number of 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 either corporate entities or individuals, are required to set up an SA. Minimum capital is A\$ 100,000 (*i.e.* approx. US\$ 6,600 at the current exchange rate). While the share capital must be fully subscribed upon incorporation, only 25% need be paid up on such shares and the balance 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 which must be in registered form and denominated in Argentine currency. Except for specific cases provided by the law there are no nationality or residence requirements, foreign individuals (whether residents in Argentina or not) or foreign companies may hold up to 100% of the share 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 provided that they do not effectively prevent the transfer of shares.

Management and representation - The SA is managed by a board of directors elected at a shareholders' meeting. The directors and even the president of the company may be foreigners; however, the majority of the members of the board of directors must be Argentine residents.

Shareholder Meetings - A shareholders' meeting must be held at least once a year in order to consider the annual financial statements, the allocation of the results of the fiscal year and customarily will appoint directors and statutory supervisors.

Shareholders' resolutions must be recorded in the appropriate minute book.

SAs must keep the following corporate books: Share Registry book, Attendance Record book for shareholders' meetings, Board's meetings minute book, Shareholders' meetings minutes book, and, if applicable, a Supervisory Committee minutes book. In addition, accounting books must be kept.

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 in those cases required by law.

Shareholders' 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 with partly paid up shares are required to pay any outstanding balance within a maximum period of two years from the date of subscription.

Any shareholder with interests in conflict with those of the company has a duty to abstain from voting on any matter which relates to such conflict. The shareholder that does not comply with this provision will be responsible for any damages resulting from a final resolution of the matter in conflict if such vote contributed to form the majority vote necessary to adopt the resolution. Further, shareholders who vote in favor of a resolution which is subsequently declared null shall be jointly and severally liable for any consequences resulting therefrom.

Directors' and managers' liability - All directors and managers of an SA are subject to a standard of loyalty and diligence; non-compliance with these standards results in unlimited joint and several liabilities for damages arising therefrom.

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

Incorporation requirements - Considering that SAU are a type of SA, they have the same incorporation requirements of SA, with some additional requirements:

- (i) SAUs can only be incorporated as corporations ("*sociedades anónimas*").
- (ii) SAUs cannot incorporate another SAU.
- (iii) SAUs share capital must be fully subscribed and paid up upon incorporation.

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- (iv) SAUs corporate name may include the name of one or more individuals and shall include the expression “*sociedad anónima unipersonal*”, its abbreviation or acronym “S.A.U.”

Capital – In the event of capital increase, the capital contribution shall be fully subscribed and paid up simultaneously upon shareholders’ approval.

Supervision – The Civil and Commercial Code establishes that SAUs are subject to permanent Government control as provided in Section 299 of LGS. In this regard, SAUs must:

- (i) appoint a board of directors composed of at least three members;
- (ii) appoint a statutory supervisory committee composed of at least three members; the committee must always have an odd number of members; and
- (iii) comply with the filings required from companies subject to permanent Government control by the Public Registry of Commerce (“PRC”) of the jurisdiction where the SAU has its registered domicile (information related to the holding of ordinary and extraordinary shareholders’ meeting and financial statements).

The fact that SAU are subject to permanent Government control makes them a costly type of corporate entity, which would not be convenient for small-scale business operations. However, SAUs may be a convenient alternative for foreign investors intending to set up a subsidiary in Argentina, since only one shareholder is required (under provisions of the now amended Argentine Companies Law, investors need to register two foreign companies with the PRC to set up a subsidiary in Argentina since a minimum of two shareholders was required) .

2.1.4 Limited Liability Companies (*Sociedad de Responsabilidad Limitada* or “SRL”)

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

Capital must be fully subscribed upon incorporation, denominated in Argentine currency and divided into partnership quotas. One 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.

Where quotas are issued in consideration 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 pre-emptive rights with respect to new issues of quotas.

Management and representation - The partners may appoint one or more managers to manage the company, who may be partners, employees or third parties. The managers represent the company, either individually or jointly, as provided for in the by-laws.

Partners’ meetings - SRL by-laws normally contain the rules for adopting resolutions. Unless the by-laws provide otherwise, resolutions may be passed in writing without the need for holding a meeting, except in those companies with a capital of A\$ 10,000,000 or more that are required to hold meetings for considering the annual financial statements. If one partner holds the majority vote, the vote of another partner will be necessary in order 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 A\$ 10,000,000 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.

Partners and Managers Liability - In general, and with a few exceptions, similar rules apply to SRLs and SAs, however, where there is more than one manager liability will depend upon the provisions of the by-laws.

2.1.5 Mergers and Spin-offs

2.1.5.1 Mergers

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

- a) mergers by consolidation, where two or more companies transfer their assets and liabilities to set up a new company (the successor company) which, as consideration, issues shares to the shareholders of the merged companies, which are then dissolved; and
- b) mergers by absorption, where one or more companies (the absorbed companies) transfer their assets and liabilities to an existing company (the surviving company) which, as consideration, issues shares to the shareholders of the absorbed companies, which are then dissolved.

Creditor's Rights - In order 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 shareholders of a company approve by resolution a merger in which their company is not the surviving company, any shareholder who voted against such a 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 at 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 as far as third parties are concerned.

Taxation - To encourage the aforesaid business re-organizations, Argentine tax law provides, in principle, that such mergers shall not give rise to any tax liability, provided that certain conditions are satisfied.

2.1.5.2 Spin-offs

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

- a) separates off part of its assets and liabilities from its existing assets and liabilities and either
 - (i) creates (together with another company) a new company to which these assets or liabilities are transferred; or
 - (ii) merges such assets and liabilities into one or more existing companies (in the latter case the rules applicable to mergers will apply);

- b) 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;
- c) creates new companies into which all of its assets and liabilities are transferred.

Creditors' Rights - Creditors in spin-offs are entitled to 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 rights of withdrawal, objection by creditors and application for judicial liens have elapsed, without any 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 IGJ and the spin-off will be effective with respect to third parties.

2.2 Other Forms of Investment Entity

2.2.1 Partnerships

Generally speaking, partnerships are entities in which the participants' liability is unlimited. Partnerships in Argentina 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 liquidation of partnerships requires unanimous consent.

2.2.2 Joint Ventures (UTE)

Specific regulation on joint ventures, previously included in the Argentine Companies Law, has been removed and is now included in Chapter 16 of the Civil and Commercial Code.

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

The UTE is a specific type of joint venture governed by the Civil and Commercial Code. A non-resident corporation may be a member of an Argentine UTE subject to it complying with the same kind of registration proceedings with the IGJ as those applicable to a branch of a foreign company.

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

UTEs are not treated as independent legal entities, although they are treated as such for certain purposes including labor law, social security contributions and for value added and turnover tax. With respect to other taxes, such as income tax and the tax on assets, UTEs are considered as transparent entities, and such taxes are therefore payable in the hands of the members.

Joint ventures other than UTEs are also permitted under the general principles of law.

2.2.3 Trusts

Law No. 24,441 of January 1995 introduced the trust concept into Argentine law. It has been instrumental in permitting innovative financial techniques to be introduced 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 operation, from other assets and creditors, and ensures that the project is not jeopardized by extraneous factors. Trusts also permit securitization of funds flowing from projects, thus opening up access to the capital markets for financing purposes.

The Civil and Commercial Code introduced amendments to Law No. 24,441. The specific regulation on trust agreements previously included in Law No. 24,441 is amended and included in Chapter 30 of the Civil and Commercial Code.

The Civil and Commercial Code establishes that a trust will be created upon the transfer of certain assets by one person (the settlor) to another person (the receiver), who undertakes to exercise the rights attributable to ownership of such assets for the benefit of a person designated in the relevant agreement as the beneficiary (the beneficiary) and to transfer the assets, upon the expiry of the trust term or upon fulfillment of a certain condition, to the residual beneficiary.

The Civil and Commercial Code provides that the receiver can be a beneficiary of the trust, though in such case, receiver must avoid any conflict of interest and privilege the interest of the remaining parties of the trust agreement. However, the Civil and Commercial Code provides that the receiver may not be the residual beneficiary.

The Civil and Commercial Code includes the alternative that a group of assets (*universalidad de bienes* - for example, goodwill) may be subject to a trust.

Pursuant to Argentine law, assets held in a trust form a separate estate from the estates of the receiver, the settlor, the beneficiary and the residual beneficiary. They therefore 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 Commission to act as financial receiver.

2.3 Certain Regulated Activities

2.3.1 Financial Institutions

Pursuant to the Financial Institutions Law No. 21,526 ("FIL") of February 14, 1977, as amended, which governs banking activities in Argentina, the Central Bank is responsible for the regulation, inspection and supervision of financial institutions. In particular, the Central Bank has 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 local counterparts. A bank must also notify the Central Bank of any proposals for transfers of interests therein and the Central Bank has power to deny or approve such proposals.

In addition, the Central Bank has power to establish the scope of permitted and prohibited activities, and to place limits on credit, indebtedness, minimum capital, reserves, net worth requirements and concentration of risks. Many of the requirements of the Central Bank mirror the risk-weighted criteria provided in the Basle 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 (the "saving and loans companies") and credit associations (commonly known as "Cajas") which generally 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 those financial and banking activities which are not prohibited by the FIL and Central Bank regulations, and they are the only financial institutions which may accept sight deposits and offer checking accounts.

The other financial institutions are limited to specifically authorized transactions.

In March 2012, Law No. 26,739 amended the Charter of the Central Bank and the Convertibility Law No. 23,928. In general, amendments were made to the functions and powers of the Central Bank as the regulatory and supervisory authority of the financial system. In addition, the amendments expanded the Federal Government's access to financing from the Central Bank.

2.3.2 Insurance Companies

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

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

- (i) corporations (SA), cooperatives and mutual societies which are incorporated and domiciled in Argentina;
- (ii) branches or agencies of foreign insurance companies, cooperatives and mutual societies, with local capital;
- (iii) state-owned entities, whether national, provincial or municipal.

To obtain an insurance license by the SSN, among other requirements a company must:

- a) have insurance activity as its exclusive corporate purpose;
- b) comply with minimum capital requirements;
- c) be registered with the Public Registry of Commerce;

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- d) file information on the proposed management, organizational chart, main policies, guidelines for the attention of insureds, risk management policies, risk control systems, anti-money laundering and financing of terrorism policies, as well as the software and hardware to be used. If the applicant is part of a corporate group, a chart with the group structure identifying all affiliates must be provided. The applicant must also provide information as regards transactions with related companies, and links between the companies that are members of the group.
 - e) present a Feasibility Report and Business Plan.

The SSN shall evaluate if the proposed initiative will contribute to the development of a productive project, the development of the national economy, the promotion of employment and reinvestment of revenues. The SSN shall also take into account 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.

Transfers of shares of previously authorized insurance companies are allowed, with the approval of the SSN.

The lines of insurance currently admitted by the SSN are related to life, personal accidents, health, retirement, burial, property and casualty, motor, liability, employer's liability, environmental damage, guarantee 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., shareholders' meetings, bylaw amendments); maintain the required level of reserves and capital; 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 the Insurance Companies Law No. 20,091, as amended, and by SSN Resolution No. 38,708/2014.

Local insurers may only reinsure risks with local reinsurers, subject to certain exceptions. Local insurers are Argentine corporations (SA), cooperatives and mutual societies, and branches of foreign companies with capital in Argentina. Companies authorized to underwrite insurance in Argentina may also write reinsurance on the same lines of business.

To obtain a local reinsurer license by the SSN, among other requirements a company must:

- a) have the reinsurance activity as its exclusive corporate purpose;
- b) comply with minimum capital requirements;
- c) be registered with the Public Registry of Commerce;
- d) file a report similar to that required of a new insurer (see 2.3.2.d) above).

Local reinsurers can place their retrocessions with other local reinsurers or with certain foreign reinsurers with no capital in Argentina provided they have been admitted and registered with the SSN.

Transfers of shares of previously authorized local reinsurers are allowed, with the approval of the SSN.

Reinsurance companies must comply with a number of ongoing requirements, including:

- (i) Keeping accounting books and records.
- (ii) Producing financial, accounting and other reports on a regular basis.
- (iii) Notifying or requiring approval for certain corporate actions (for example, shareholders' meetings, and amendments to by-laws).
- (iv) Maintaining the required level of reserves and capital.
- (v) Reporting suspicious activities under anti-money laundering regulations.

2.4 Capital Market Regulations

On December 27, 2012 the new Securities Law No. 26,831 was enacted (the "Securities Law"), effective as from January 27, 2013, which modifies the public offer regime set forth by Law No. 17,811, as amended. The regulation of the Securities Law was approved in August 2013 by Decree No. 1023/2013 and in September 2013 the Argentine Securities Exchange Commission (CNV) completed the analysis of the new framework through Resolution No. 622/2013. In general terms the Securities Law changes the applicable regime to Stock Exchange and Agents and the powers conferred to the Argentine Securities Commission (*Comisión Nacional de Valores*) ("CNV") and reflects most of the modifications introduced in the Transparency Decree No. 677/2001. The Securities Law addresses several aspects relating to transparency in the public offers regime, such as participation in public offerings, disclosure of relevant information, tender offers, insider trading and market manipulation. It also contains further regulations with respect to the supervisory capacity of the CNV, summary investigations and administrative sanctions.

The securities market is divided from a regulatory viewpoint into a private market and a public market. This division is based on the concept of "public offer". A public offer is an invitation, made by an issuer or by individuals or companies engaged fully or partially in the purchase and sale of securities, to the general public, or certain sectors or groups thereof, made through personal offers, newspaper advertisements, radio or television broadcasts, films, billboards, signs, programs, circulars, printed notices or by any other means, to enter into any transaction involving securities. The term "transaction" is construed by the Securities Law in the broadest sense, including the initial issue and placement of securities (primary offer), as well as the subsequent purchase and/or sale thereof (secondary market), whether by traditional or electronic means. Only public offers of securities are subject to the Securities Law. Neither the Securities Law nor the CNV regulations include a definition of private placement, much less a specific safe harbor of the type often found in the laws of other jurisdictions. Therefore, the concept of private placement may only be defined by exclusion as any placement of securities that is not deemed to be a public offering.

In order to be engaged in a public offering of securities, issuers, placement agents, registered agents authorized by the CNV, and other entities involved in the public offer must be registered with the CNV and must comply with the requirements determined by the CNV to apply for authorization to operate. The Securities Law provides that only securities that have identical rights in each class may be publicly offered. CNV approval of a public offer means only that there has been compliance with the regulations applicable to the offer and does not provide any assurance with respect to the subsequent performance of the particular security as an investment.

Issuers who have received authorization must continue to observe certain reporting requirements as long as they are authorized to publicly offer securities. There are approximately 14 stock exchanges in the country,

of which the Mercado de Valores de Buenos Aires S.A. (MERVAL) is the most important. According to the Securities Law, stock exchanges must be integrated and use the same electronic platform.

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

The Securities Law eliminated the self-regulation of markets rules. It 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.

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

The Securities Law created several types of licenses in order to engage in the public offering of securities. Under prior Law No. 17,811, there was a single license for all broker dealer activities. The Securities Law, on the other hand, includes at least three licenses that are related to broker-dealer activities: broker-dealer license, an underwriter license and a clearing member license.

The regulations of the CNV set out specific procedures regarding the registration of debt securities, asset backed securities, pooled funds or investment funds, direct investment funds and money market funds. There are also lesser requirements for the listing of securities of small and medium size companies.

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

Regarding the primary placement of securities, the CNV issued General Resolution No. 662 (May 2016), which provides two placement options. Placement can be done either throughout the formation of a book (known as "book building") or through auction or public tender. The book building method consists in creating a curve based on the interest expressed by possible purchasers that allows thereafter the determination of the price at which the securities are offered. On the other hand in auction or public tender method, issuers place the highest bid at which they are willing to sell the securities; the price fluctuates according to the amount of investors willing to purchase securities at that price and the amount of securities that they are willing to acquire.

In addition, the placement procedure must ensure full transparency and must be made public in all its terms prior to its beginning through a computer network system which will allow 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 in the auction or public tender, or indications of interest in the *book building* system to place offers during the offering period. The offering period is of a minimum of 3 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 to be published 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.

As for financial trust regulations, the CNV issued the General Resolution No. 658 on April 14, 2016, providing several amendments. One of them involves the possibility of incorporating new trustors in authorized Global Programs of trust securities. This possibility is not provided for trustees. General Resolution No. 658 expressly provides that the initial identification of the trustee in the global program does not allow the possibility of its replacement. This provision was reaffirmed by General Resolution No. 671 of CNV dated July 21, 2016, through which the financial trusts regulations are aligned with the provisions of the Civil and Commercial Code.

Furthermore, the CNV regulated the creation of Global Programs of trust securities by small and medium-sized enterprises (“SMEs”) through several regulations. The purpose of these financial trusts is exclusively the financing of entities qualified as “SMEs”. Pursuant to General Resolution No. 660, issued by the CNV on April 21, 2016, trustors may be identified at the time of the creation of each financial trust, provided that the trustor qualifies as “SMEs”. It is important to bear in mind that trustees of financial trusts may only be financial entities or a corporations specifically authorized by the CNV to act as financial trustee.

Additionally, General Resolution No. 670 of the CNV dated July 21, 2016, provides the updated definition of SMEs, only to the effect of access to capital markets, as companies duly organized and existing under the laws of Argentina, whose total annual incomes in pesos do not exceed the following values: (i) agribusiness sector: A\$ 160.000.000; (ii) industrial and mining sector: A\$ 540.000.000; (iii) commerce sector: A\$ 650.000.000; (iv) services sector: A\$ 180.000.000; and (v) construction sector: A\$ 270.000.000.

2.4.1 Insider Trading

The Securities Law and several CNV regulations are aimed at preventing the misappropriation of non-public information and guaranteeing fair dealing in the securities market. The CNV must be informed of any relevant facts that may have a significant effect on the purchase and sale of securities. In addition, the CNV imposes a duty on certain persons to keep secret all information that has not been publicly disclosed and which may have an impact on the price of securities. Furthermore, 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. Such persons 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 shall be entitled to recovery proceedings in connection with the use of privileged information by insiders (“short swing profits”).

Amendments to the Argentine Criminal Code made on December 28, 2011 include criminal sanctions applicable to insider trading activities. The new provisions introduced by Law No. 26,733 include criminal penalties applicable to directors, members of supervisory bodies, shareholders, shareholders’ representatives and whoever that, by means of its 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.

Furthermore, these activities are subject to the following sanctions which may be imposed by the CNV: (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 A\$ 20,000,000, which may be raised up to five times the benefit obtained by the insider if it were higher; (c) disqualification for up to 5 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 2 years of the authorization to make public offering; and (e) prohibition to make public offering of securities or to act in the sphere of the 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 through any other fraudulent means incorporation into the market, of assets proceeding from a criminal act, 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 A\$ 300,000. If the value of the laundered assets is less than A\$ 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 which 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 the economic and financial order commonly involves currency but it might also include any other material or legal asset, movable or immovable property. A relevant distinction to be made with most other criminal offences is that under Section 23 of Law No. 25,246 money laundering can be charged to legal persons in addition to individuals.

2.5.1 Applicable Rules

Applicable rules on money laundering are mainly included in Argentine legislation, as well as in several international commitments that the country has undertaken. The main international guidelines are the recommendations made by the Financial Action Task Force (FATF); Argentina is one of the 37 member countries of this organization in addition to the “*Grupo de Acción Financiera de Latinoamérica*” (GAFILAT), composed by 16 Latin-American countries. Local legislation should be examined carefully due to the fact that 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 is comprised of two different 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”), created by Law No. 25,246 and its modifications. This special agency is responsible for issuing regulations that implement the law and for monitoring compliance, with special emphasis on the prevention of money laundering related to corruption, tax evasion, terrorism, extortive kidnapping, drug trafficking, weapon smuggling, child prostitution and pornography, corruption, and racially or politically motivated crimes. Decree No. 360/2016 created a National Program to combat money laundering and terrorism financing and, establishes that this organization has the competence to create and lead operative coordination in the national, provincial and municipal sphere. The Unit is managed by a board that includes representatives of the Central Bank, the CNV, the Tax Authority, the Secretary of Drug Prevention, the “national coordinator” (created under section 4 of Decree No. 360/2106) and three experts from each relevant field. The UIF collaborates in the Egmont group, an international agency comprised of several entities of this nature to prevent and fight against money

laundering crimes. From 2012-2013 Argentina assumed the presidency of the group of experts for the control of money laundering (LAVEX) that operates under the scope of the Inter-American Commission to control drugs within the American States (CICAD/OEA).

2.5.2 Information 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 Central Bank, the CNV), are required to report suspicious transactions to the Unit and implement “know-your customer” 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; organisms such as the Public Registry of Commerce (IGJ) require the determination of the final beneficiaries of legal entities and their shareholders;
- (ii) store such 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 (defined as any transaction that, based on the experience of the reporting company and taking into account 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 such suspicious transactions or any pending proceedings.

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

3. Tax Considerations

3.1 Income Tax

Income Tax Law No. 20,628, as amended ("ITL"), establishes a federal tax on the worldwide income obtained by Argentine-resident individuals, legal entities incorporated in Argentina and Argentine branches of foreign entities.

As regards income earned by Argentine residents from activities performed abroad, any payment of foreign taxes will be allowed as a credit against payment of the applicable Argentine tax. However, the credit may only be applied to the extent the foreign tax does not exceed the Argentine tax.

Non-resident individuals or legal entities without a permanent establishment in Argentina are taxed only on income from Argentine sources. Pursuant to the ITL, income arising from: assets located, placed or used in Argentine territory, the performance of any act or activity in Argentina that produces an economic benefit, and events occurring in Argentina will be considered Argentine-source income.

There are special rules regarding source of income in the case of certain specific activities such as international transport, telecommunications and technical assistance provided from abroad.

Income tax is payable upon the net income obtained during a given fiscal year. As a general rule, income is allocated to the fiscal year in which it accrues. However, there are certain exceptions to the general rule, such as for example the interest paid on government issued securities and bonds, where the income is allocated to the fiscal year in which the interest becomes due.

3.1.1 Rates of Income Tax

The tax rate applicable in Argentina upon the net income of corporate entities incorporated in Argentina, such as SAs or SRLs, is 35%.

The net income of branches and other permanent establishments of foreign companies in Argentina are also subject to tax at the rate of 35%.

Argentine-resident individuals are taxed upon a sliding scale ranging from 9% to 35% depending on the net income obtained during the fiscal year. However, income derived from the sale, exchange or other disposition of shares, quotas, bonds and other non-listed securities is subject to a 15% rate.

Distribution of dividends or profits (in cash or in kind) by SAs, SRLs and branches of foreign entities can be made on a tax free basis, except where such distributions derive from profits that were not taxed at a corporate level in accordance with ITL provisions: In those cases, the entity making the distribution must withhold 35% of the amount being paid in excess of its net taxable income (the so-called "equalization tax).

3.1.2 Transfer Pricing Provisions

Transfer pricing practices are considered to 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 low tax jurisdiction,

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

Pursuant to the provisions relating to transfer pricing, any transactions between related companies or unrelated companies located in low-tax jurisdictions are deemed not to be at arm's length, unless evidence to the contrary is provided. In order to establish that the terms of the transaction are equivalent to an arm's length transaction ("arm's length compliance"), Argentine businesses must submit special reports containing detailed information including data and supporting documentation.

Decree No. 589/2013 amended the Regulatory Decree of the ITL. Under the amendment, for all purposes of the ITL and its regulations low tax jurisdictions are those that qualify as "non-cooperative" for tax transparency purposes. Jurisdictions are "cooperative" for tax transparency purposes if:

- a) they have executed an agreement to exchange information with Argentina,
- b) they have executed an agreement to avoid double taxation with Argentina including a broad Section about exchange of information and the exchange of information is effective, or
- c) negotiations for any of such treaties have been initiated with Argentina.

The Argentine Tax Authority publishes a list of jurisdictions deemed to be "cooperative" for tax transparency purposes on its website.

3.1.3 Foreign Exchange Gains and Losses

To determine Argentine income tax, transactions must be valued in Argentine currency. Consequently, fluctuations in foreign exchange rates generate foreign exchange gains or losses.

3.2 Withholding Tax on Non-Residents

3.2.1 General Rule

In principle, any income or gain deemed by the ITL to be from an Argentine source, obtained by a non-resident individual or a foreign legal entity without a permanent establishment in Argentina is subject to withholding tax.

In order 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 non-Argentine resident to opt to apply a 35% rate to the real income or gain obtained in the transaction. Should the local payer assume the obligation to pay the tax for the non-resident recipient, the net amount payable must be grossed-up in an amount equal to the tax assumed by the Argentine taxpayer.

Argentina, along with a number of other countries, is party to tax treaties which impose ceilings on withholdings of certain taxable income, which may reduce the rates of the withholding tax.

3.2.2 Capital gains

Gains derived from the sale, exchange or disposal of shares, quotas, securities, bonds, obtained by non-resident individuals and foreign legal entities, are subject to Income Tax in Argentina at a 15% rate. In such cases, the law presumes that the net income is 90%, to which the 15% rate must be applied. Thus, a 13.5% effective withholding rate applies. However, the non-resident individual or foreign legal entity may opt to pay 15% on the difference between the gross amount of the transaction less the costs incurred in the country in order to obtain and maintain the income and other deductions allowed by the ITL. Where the shares, quotas, securities or bonds are transferred to a non-Argentine individual or foreign legal entity, the buyer is appointed as the one liable for paying the tax.

3.3 Tax Exemptions for Foreign Entities

Non-resident corporations are entitled to all of the tax exemptions provided in the ITL, provided they file a certificate with the Argentine tax authorities evidencing that the exemption will not result in liability to taxation in a foreign jurisdiction. This certificate must be issued by the competent foreign tax authorities or by a certified public accountant.

One of the most important tax exemptions established by the ITL is that any interest accruing upon accounts and deposits made by Argentine and foreign entities in Argentine financial institutions is tax-exempt, provided the foreign beneficiary of the interest files the required certificate.

3.4 Tax on Presumed Minimum Income

This tax applies to all assets of Argentine companies and other entities, such as Argentine trusts ("*fideicomisos*"); common investment funds; and permanent establishments of foreign entities and individuals in Argentina.

The tax only applies if the total value of the assets exceeds A\$ 200,000 at the end of the entity's financial year. In this case, the total value of the assets will be taxed at the rate of 1%.

Normal corporate income tax is allowed as a payment on account of this tax. Also, any tax payable under this heading is allowed as a credit against normal corporate income tax for the following ten years.

According to Law No. 27,260, published in the Official Gazette on July 22, 2016, this tax has been abrogated for fiscal years to be initiated as from January 1, 2019.

3.5 Value Added Tax (VAT)

This tax applies to the sale of goods located in Argentina, the provision of services and the importation of goods.

Under certain circumstances, services rendered outside Argentina which are effectively used or exploited in Argentina (usually called "importation of services"), are deemed rendered in Argentina and are therefore subject to VAT.

VAT is paid at each stage of the production or distribution of goods or services upon the value added during each of the stages. Thus, this tax does not have a cumulative effect.

The tax is levied on the difference between the so-called "tax debit" and the "tax credit".

The difference between the "tax debit" and the "tax credit", if it is positive, constitutes the amount to be paid to the Tax Authority. The present general rate for this tax is 21%. Sales and imports of capital goods are however subject to VAT at a lower tax rate of 10.5%.

3.6 Personal Assets Tax

The Personal Assets Tax Law No. 23,966, as amended, provides that all individuals domiciled in Argentina are subject to a tax upon their worldwide assets. Individuals not domiciled in Argentina are only liable for this tax upon their assets located in Argentina. Shares, other equity participations and other securities are only deemed to be located in Argentina when issued by an entity domiciled in Argentina.

According to Law No. 27,260, published in the Official Gazette on July 22, 2016, the tax must be determined according to the total value of the relevant assets and the tax period involved:

	<i>Value of the assets</i>	<i>Tax treatment</i>
<i>Tax period 2016:</i>	Less or equal to A\$ 800,000	Non-taxable
	Higher than A\$ 800,000	Subject to tax at a 0.75% rate in excess of A\$ 800,000
<i>Tax period 2017:</i>	Less or equal to A\$ 950,000	Non-taxable
	Higher than A\$ 950,000	Subject to tax at a 0.50% rate in excess of A\$ 950,000
<i>Tax period 2018 and subsequent periods:</i>	Less or equal to A\$ 1,050,000	Non-taxable
	Higher than A\$ 1,050,000	Subject to tax at a 0.25% rate on the excess of A\$ 1,050,000

Individuals not domiciled in Argentina are only liable for this tax upon their assets located in Argentina at a fixed rate of: (i) 0.75% for the 2016 tax period; (ii) 0.50% for the 2017 tax period; and (iii) 0.25% for the 2018 tax period and subsequent periods.

The tax applicable on shares and other equity participations in local companies is paid by the local company itself. The applicable rate is 0.25% on the net worth value of the company.

3.7 Tax on Credits and Debits in Bank Accounts

This tax is levied upon debits and credits in bank accounts and upon other transactions which, due to their special nature and characteristics, are similar or could be used in substitution for 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 systems of payment in substitution for bank accounts. Tax law and regulations provide for several exemptions to this tax.

The general rate of the tax is 0.6% over each credit and debit. An increased rate of 1.2% applies in cases in which there has been a substitution for the use of a bank account.

3.8 Tax Treaties

Argentina has tax treaties presently in force with the following countries: Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, Norway, Russia, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom and Uruguay. In general, these treaties are based, other than those with South American countries, upon the OECD model and particularly seek to avoid double taxation. To date, there is no tax treaty in force between Argentina and the United States.

3.9 Turnover Tax (Tax on Gross Income)

Turnover tax is a local tax levied on gross income. Each of the provinces and the City of Buenos Aires apply different tax rates to different activities. The tax is levied on the amount of gross income resulting from business activities carried on within the respective local jurisdictions. The provinces and the City of Buenos Aires have entered into an agreement to prevent double taxation of activities performed in more than one jurisdiction.

3.10 Stamp Tax

Stamp tax is a local tax levied on public or private instruments, executed in Argentina or, if executed abroad, to the extent that those instruments 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 agreement.

4. Protection of Intellectual Property

Section 17 of the Constitution protects intellectual property by providing that: "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. Furthermore, Argentina has also 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, together with its regulatory decree. The law provides that the ownership of a trademark and the right to its exclusive use are obtained by registration with the Trademark Office. Accordingly, registration grants proprietary rights. For the purposes of the registration of trademarks, as of April 9, 1981, Argentina has adopted the International Classification of Goods and Services.

The duration of a trademark registration is ten years from the date of its granting and it is renewable indefinitely for periods of ten years provided 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.

A trademark holder may apply for a preliminary injunction on the basis of both the TRIPS Agreement and the Argentine Code of Civil Procedure. In both cases, for the injunction to be granted, the applicant must provide reasonably strong evidence showing 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 to the alleged infringer.

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 (Law No. 17,011) and to the TRIPS Agreement (Law No. 24,425) but not to the Patent Cooperation Treaty (PCT).

The Patent Law provides that patents will 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 the 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 carrying out without his/her consent acts of manufacture, use, offer for sale, sale, or importation within the territory, of the product which is the subject matter of the patent. The protection for process patents covers the act of using the process, and also the act of 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. The reversal of the burden of proof will not be applied when the product directly obtained from the patented process is not new. The product will not be 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 company. A foreign individual or legal entity must establish a legal address within Argentine territory.

Patents and Utility Models may be assigned and licensed, in whole or in part. The assignment must be recorded with the Argentine Patent Office (*Instituto Nacional de Propiedad Industrial* or *INPI*) to be effective *vis-à-vis* third parties.

With respect to plants, as of September 1994, Argentina is a party to the International Convention for the Protection of New Varieties of Plants ("UPOV"), as revised in Geneva in 1978.

4.2.2 Pharmaceutical Patents

As a consequence of the entry into force of the TRIPS Agreement, as of October 24, 2000 the first pharmaceutical product patents were granted in Argentina, after a prohibition of more than 130 years. Enforcement of these patents is in principle identical to that of other non-pharmaceutical patents.

However, on May 2, 2012 the Argentine Patent Office, along with the Ministries of Industry and of 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:

- a) 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 therefore is not considered to be an invention. Processes to obtain polymorphs constitute routine experimentation and therefore are not patentable. Similar considerations apply to hydrates and solvates, which are considered as polymorphs.
- b) Single enantiomers are not patentable when the racemic mixture was 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.

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- c) Compounds represented by Markush structures will be accepted if the specification includes examples which are representative of all the compounds claimed. These examples must include physicochemical data for each compound obtained.
 - d) Selection patents will not be allowed as novelty will not be recognized for the selection of one or more elements which were already generically disclosed in the art (such as in a Markush claim), even if these elements show different or improved properties.
 - e) Salts, esters and other derivatives (such as amides and complexes) of known substances are considered as the same substance and are not patentable.
 - f) Active metabolites are derivatives from the active ingredients that are produced in the body, and cannot be considered as “created” or “invented”. Metabolites are not patentable as an independent object from the active compound.
 - g) 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.
 - h) 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.
 - i) 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.
 - j) Any additional example or information filed during prosecution of an application will be considered as far as it does not broaden the original disclosure.
 - k) 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 are conceived as general instructions addressed to the patent examiners. Experience with the existing general guidelines for patent examination has shown, however, that in practice such guidelines operate as very specific legal provisions which must be adhered to.

At first sight it appears that the Regulation runs counter to the TRIPS Agreement, the Argentine Constitution, and the Argentine Patent Law.

4.2.3 Biotech Inventions

The Argentine Patent Office issued Regulation No. 283/2015 amending the Patentability Guidelines on biotechnological inventions (Official Gazette, October 5, 2015).

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

The main amendments are as follows:

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- a) *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.
 - b) *Plants and animals*: Consistent with the PTO's practice heretofore, plants and animals are non-patentable subject matter irrespectively of whether they are modified or not.
 - c) *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 elements are patentable subject matter as long as they are modified, isolated and cannot regenerate into a complete organism.
 - d) *Transformation events*: Event claims are allowed, provided the following requirements are met:
 - (i) the entire sequence of the insert is disclosed,
 - (ii) the flanking regions with at least 100 pairs of bases is disclosed, and
 - (iii) the certificate of deposit of the biological material is referenced.
 - e) *Isolated*: The regulation provides a definition of the term "isolated" requiring the claimed element to be separated from any organism.

At first sight it appears that the Regulation runs counter to the GATT TRIPs Agreement, the Argentine Constitution, the Argentine Patent Law and its regulating decree.

4.2.4 Software Patents

The Argentine Patent Office 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 EPO on June 20, 2012, although it is more restrictive with regard to computer programs as such, which, pursuant to Section 6 of the Argentine Patent Law, are not acceptable.

In this connection, Regulation No. 318 summarizes as follows the current official stance regarding software patents:

- a) 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;
- b) this applies too when the computer program is carried out by a known computer;
- c) 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;
- d) all inventions involving a computer program which provide a technical solution to a specific problem in a technical field may be considered to be patentable.

These new guidelines on software patents summarizes the official criterion which evolved since 2003; examples of matter that may be considered as having technical character are (i) 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 Preliminary Injunctions

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

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

- a) likelihood of validity;
- b) likelihood of infringement;
- c) irreparable damage to the patentee; and
- d) balance of hardship.

An official technical expert has to be appointed to issue a report on points a) and b).

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

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

4.2.6 Other Remedies

Apart from applying for preliminary injunctions, the claimant may also claim for damages consisting of compensation for the damages that the plaintiff can effectively prove it has suffered (*inter alia*, loss of profits, failure to collect a reasonable royalty, and price erosion). Punitive damages are in principle not available.

4.2.7 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 that it improves the way an object functions. Utility Model Certificates are granted for a non-extendible term of ten years from the filing date.

4.3 Industrial Designs and Models

Industrial models or design registrations are granted to protect the appearance or shape of an industrial product and which confer 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 fifty different examples of a single model or design, provided that all of them 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. Renewals must be applied between nine to six months prior to the expiry of the respective period.

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 "ccTLD.ar". However, there are administrative resolutions passed by the Argentine government that regulate domain name registration procedure in Argentina.

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

4.5 Copyright

Protection of copyright in Argentina is based on the constitutional principle set out in Section 17 of the Argentine Constitution. However, copyright matters in Argentina are specifically governed by Law No. 11,723 of September 26, 1933, as amended (the "Intellectual Property" or "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 seventy years as of January 1 following the author's death.

For a foreign work to qualify for copyright protection in Argentina, the conditions for protection under a copyright convention to which Argentina has adhered must be satisfied or the author must have complied with the formalities required for protection in the country where the work was first published (provided that he or she is a national of a country recognizing copyright).

4.5.1 Computer Software

Argentine Law No. 25,036, which came into effect on November 19, 1998 has amended Section 1 of the IP Law, which now reads as follows: "*For the purposes of this law, scientific, literary and artistic works include written material of all types and length, amongst which are included, **computer programs both in source and object codes, databases or compilations of other material** (...), regardless of the process of reproduction.*"

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 provides that computer software components and documents may be registered with the relevant authorities in order 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 an Argentine resident as licensee and a non-resident as licensor, 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/or any other technical knowledge necessary for the manufacturing of products or the rendering of services.

According to Resolution No. 117/2014, license agreements executed between two local companies or between a local and a foreign company, are also registered before the Argentine Transfer of Technology authorities for information purposes. The submission is voluntary.

Prior administrative approval of any technology transfer agreements executed between local entities and their foreign controller companies is not required under Argentine law. If the agreement is not registered, it is nevertheless valid, but certain tax benefits are not applicable.

4.7 Indications of Source, Geographic Indications and Appellations of Origin

There are two pieces of legislation in Argentina which regulate the protection of Geographical Indications (GIs), namely (i) 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); and (ii) 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.



Indications of source, geographic indications and appellations of origin already registered in the country of origin may be included in the National Registry.

5. Distribution and Agency Agreements

5.1 Distribution Agreements

Distribution agreements had not been legislated under Argentine law until the enactment of the new Civil and Commercial Code, and the rules of interpretation of their terms (written or not) have been established through case law.

The Civil and Commercial Code regulates this contract, not specifically but by applying to it the rules on concession contract, as far as they are applicable (Section 1502 and following and in particular Section 1511 of the Civil and Commercial Code).

In general terms, the legislation provides that:

- a) Unless the contracting parties agree otherwise, the assigned territory is exclusive and includes all goods and products sold by the grantor of the distribution.
- b) Regarding the obligations of the grantor, and in addition to what may be agreed between the parties, law provides that: (i) they can agree on sales target, (ii) the grantor must provide the distributor with the necessary goods in order to sell them in the assigned territory, (iii) the grantor must respect the territory –but the grantor can reserve for him or herself the 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.
- c) The most important obligations of the distributor, in addition to what might be specifically agreed between the parties, are: (i) to exclusively buy from the co-contracting party, (ii) to respect the geographic limits, (iii) to provide the pre-delivery services, (iv) to have a suitable location/s, and (v) to provide the proper maintenance and training of the staff.
- d) The term of the contract cannot be less than four years, and if a lower or undetermined period is agreed between parties, 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.
- e) Retribution may consist of a margin of the products resale, goods or a commission.

Regarding the termination of the contract, the law intended to protect and benefit the rights of distributors, since it refers to Sections 1492 and 1493 of the Civil and Commercial Code. Both Sections regulate agency contract and provide that in order to end a contract without cause, it is necessary to give the distributor one month notice per year of contract, without any limitation.

Thus, a lower term for notice cannot be contractually established, but parties can agree on a longer one. The penalty for not giving the required notice term is that the grantor shall pay the distributor the profits not earned due to lack of proper prior notice.

This does not mean that parties cannot agree on other termination causes beyond those provided by Section 1494 (death or incapacity, dissolution, insolvency, unmet deadlines or repeated breaches serious enough to

question the distributor's ability to accomplish his or her obligations). The Law also provides for a lower term (2 months) in the event that the distributor's sales volume decreases for two consecutive years.

5.2 Agency Agreements

The agency contract has also been legislated in the new Civil and Commercial Code.

In general, the same rules as in the distribution and concession agreements apply, especially regarding the termination. But its main characteristic is that the agent promotes business on behalf of a third party.

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

The contract must be written and must include the agent's assigned zone. Unless 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 taken into account and recognized financially. This would not be applicable if termination was due to agent's conduct.

6. Consumer Protection and Antitrust Legislation

6.1 Principal Sources of Law and Regulation

Consumer protection has been a constitutional right since 1994 and is governed by general regulations for damages in Argentina, which arise from the newly enacted Civil and Commercial Code and Consumer Protection Law No. 24,240 (“CPL”), as amended. Consumers are further protected by the fair trade laws which establish rules for labeling and advertising products. Lastly, in principle, antitrust laws make provision for protecting consumers from the abuses of market manipulation and anti-competitive behavior.

6.2 General Regulations

The most significant reform in this field of practice is that the distinction between contractual and tort liability was eliminated in the new general regulations provided by the Civil and Commercial Code.

The liability of the supplier is based on the contract entered into with the consumer. The supplier is deemed to undertake an outcome obligation towards the purchaser, because the product or service involved in the contract has the objective of satisfying a given purpose. The supplier is also liable for hidden defects existing at the time of the purchase.

Liability may also arise when no contract exists between the consumer and the supplier because there is an obligation not to harm another person and to indemnify whenever such harm is done.

Additionally, obligations also arise from the defects of the product or from the risk of introducing a defective product into the marketplace. Accordingly, when the damage has been caused by a fault or risk inherent to the product, the manufacturer is strictly liable.

The statute of limitations for a consumer liability claim is 3 years, unless any other applicable law provides a more favorable term to the consumer.

In order to establish civil liability there must be a causation link between the act or omission and the damage arising. The test to establish causation is the “adequate cause” test. Therefore, an act or omission resulting in damages will be attributed to a person if such act or omission regularly or commonly leads to the production of such result. An abstract or objective foreseeability test is thus required to establish whether or not a given result is the consequence of a given act or omission.

The cause should never be just a mere condition of the damage. It has to contribute effectively to the harm suffered.

Finally, under the Civil and Commercial Code, emphasis is made not only on damage compensation but on the prevention thereof. For this purpose judges are empowered to issue preventive measures where consumer rights are at stake.

6.3 Consumer Protection Law

The CPL protects consumers throughout the different contractual phases from negotiation to the delivery and performance of goods (including used goods) and services.

6.3.1 Definition of Consumers

Consumers are individuals or companies that acquire or use goods or services as end-users, for free or not, and for their own benefit or for the benefit of their family or social group. Any person who is not part of a consumer relationship but acquires or uses products as a consequence of a consumer relationship will also be considered to be a consumer.

6.3.2 Duty to Inform

Suppliers must provide consumers with true, detailed and accurate information about the goods or services offered and products must be safe for the health of consumers. The law declares null and void certain contractual clauses that are considered abusive. The law also contains special rules for the services provided by public utilities.

If a supplier becomes aware that a product is dangerous after having introduced it into the market the supplier must notify this circumstance immediately to the relevant authorities and to consumers through the appropriate channels. There is no express legal obligation pertaining to the voluntary conduct of a product repair or recall by supplier. However, if the product is considered to be risky or dangerous, recall could be considered necessary as part of the general duty to prevent damages and the duty of suppliers to sell safe products. Also, this action is likely to be taken into consideration to mitigate sanctions and the imposition of liability, as it could be considered as a measure to reduce risks or damages.

6.3.3 Liability Regime

The CPL sets forth strict, joint and several liability of the producer, manufacturer, distributor, supplier, retailer and/or anyone using its brand or trademark on the product or service, for damages arising from the risk or defect of products or services. The carrier is responsible for damages caused to the product as a consequence of or on the occasion of the service.

Consumers are vested with the right to commence individual actions in the event their CPL rights are affected or threatened.

6.3.4 Class Actions

The law does not provide for a mechanism for class actions or representative proceedings. However, the CPL entitles non-governmental organizations (NGOs) and consumer associations to file collective actions in defense of a group of affected consumers. This law also provides for an opt-out system and allows the representative associations to litigate without having to bear court tax (and, according to some case law, other legal expenses).

Class action admissibility rules and proceeding guidelines were initially provided by the Supreme Court while ruling *Halabi v. Executive Power* (2009). In that landmark ruling, the majority described the main

characteristics of class actions for the enforcement of individual and homogeneous rights; thus implying a difference from those rights which protect collective rights and are individual by nature.

The Supreme Court classified rights under three categories:

- (i) individual;
- (ii) rights of collective impact that concern collective assets; and
- (iii) rights of collective impact that concern individuals but homogeneous assets.

It finally set the following requirements in order to admit the actions for claiming the rights mentioned in item (iii):

- there must be a sole detrimental fact that affects an important number of individual rights;
- the action must be focused on the common effects and not on the claims of each particular person;
- each individual interest, individually considered, must not justify the filing of a lawsuit which could compromise access to justice.

Notwithstanding the above, the ruling expressly states that the class action will be admitted even if the requirements are not strictly complied with, whenever there is a matter of extreme importance involved, such as the environment, consumer rights, health, or if it is affecting groups that have been traditionally ignored, or under protected.

Likewise, the Supreme Court also explained that the formal admission of any class action requires the verification of certain elemental requirements which are of the essence and affect its feasibility; such requirements are:

- a) precise identification of the affected collective group;
- b) competence/capability of the person who will be representing such group;
- c) existence of common arguments related to facts and rights;
- d) proper notification to all the people who may have an interest in the result of the trial, thus ensuring them the possibility of opting in or out;
- e) proper publicity of the case to avoid multiplication or overlapping of class actions on the same matter.

Furthermore in October, 2014, the Supreme Court issued Agreement No. 32/2014 which created the "Public Registry for Collective Actions" ("Registry") and set forth procedural rules providing for the Certification Order in collective actions.

The Registry is public, free of charge and of access, and it operates under the authority of the Secretary of the Supreme Court. The Registry records all collective actions (i.e. collective *amparos* and class actions) in order of appearance.

In April 2016, the Supreme Court issued Agreement No. 12/2016, which created the "Regulation for procedure in Collective Actions". This Regulation establishes a common framework of action for collective action procedures, except for environmental procedures, until the Argentine Congress passes a law regulating on this type of proceedings.

6.3.5 Punitive Damages

Claims initiated by consumers and consumer associations may include punitive damages fixed by a judge for a maximum of A\$ 5,000,000 (approx. US\$ 333,000). Trials are, in principle, cost-free for consumers and consumer associations.

6.4 Users and Consumers' Jurisdiction

Law No. 26,993 created three new entities to deal with consumer claims: (i) a mandatory conciliation system/procedure ("COPREC"); (ii) an administrative body with the authority to decide on monetary claims and award damages (the "Audit of Consumer Relations"); and (iii) a new judicial body exclusively for consumer claims (the "National Court of Consumer Relations").

The COPREC procedure was regulated by Decree No. 212/2015 but the Audit of Consumer Relations and the Argentine Courts of Consumer Relations have not yet been created.

These entities will resolve on consumer claims under approx. US\$ 25,000. Such cap will not apply to punitive damages, which may be awarded by the National Court of Consumer Relations up to the maximum established by law. Claims above that amount will continue to be filed before the ordinary courts.

The new legislation also provides for accelerated procedures with new rules: (i) gratuity for consumers (free legal advice and no court tax); (ii) oral procedure; (iii) very short terms; (iv) restrictions to evidence (v.gr. no confessional hearing, no rules re expert witnesses' evidence); (v) no preliminary defenses; and (vi) pro-consumer approach (*in dubio pro consumer*).

The Law provides for the immediate application of the new procedural rules to the consumer claims currently pending before the traditional judiciary.

6.5 Antitrust Law

6.5.1 Argentine Antitrust Law

In 1994, when the Argentine Constitution was amended, protection against competition involving any kind of market distortion, and control of natural and legal monopolies were included as a constitutional right. In September 1999 the Argentine Congress modified the former antitrust law, by means of Law No. 25,156 (the "Antitrust Law") and Decree No. 1019/1999 the provisions of which took effect on September 28, 1999. The latest amendment to Law No. 25,156 took place on September 2014 by means of Law No. 26,993 (the "Amendment Law").

Over the last 15 years there have been challenges as to which body would be the enforcer of the Antitrust Law. This can be traced back to the original settings of the Antitrust Law, which created an Antitrust Tribunal within the scope of the Ministry of Economy that would be the ultimate antitrust regulator in Argentina. However, said Antitrust Tribunal was never created.

The Supreme Court ultimately decided in two cases,¹ the continuation of the two-tier regulatory system that had been set out by the previous Antitrust Law composed of the Antitrust Commission which would perform

¹ Rulings issued by the Argentine Supreme Court, *in re Credit Suisse First Boston Private Equity Argentina II y otros s/ apel resol*

technical reviews on mergers and investigations and issue recommendations to the Secretary of Trade, which would be the ultimate ruling body. However, said two-tier regulatory system generated a new series of challenges as regards to which of the two authorities had the powers invested by the Antitrust Law to the Antitrust Tribunal. The Amendment Law eliminated the notion of the Antitrust Tribunal and set out an “Enforcement Authority” which had to be appointed by the Executive Power. On May 27, 2016, the Executive Power appointed the Secretary of Trade as Enforcement Authority. All references to the Antitrust Commission refer to the two-tier regulatory system currently in place.

6.5.2 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 market, and provided that in both cases, they may cause harm to the general economic interest.

The Antitrust Law is applicable to all individuals and entities that carry out business activities within Argentina and to those who carry out business activities abroad, to the extent that their acts, activities or agreements may have any effects in the Argentine market.

6.5.3 Description of Prohibited Practices

Section 2 of the Antitrust Law includes a non-exhaustive list of acts considered as restrictive practices, provided that the other requirements established in Section 1 of the Antitrust Law are also met.

6.5.4 Dominant Position

For the purposes of the Antitrust Law, the term “dominant position” includes situations where one or more than one person is 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 said person is not the only offeror or demanding party in any of those markets, they can still be deemed as holding a dominant position if they are not subject to substantial competition, or if by means of a vertical or horizontal integration such person is in a position to harm the economic viability of a competitor in the market.

6.5.5 Cartel Prosecutions

According to the interpretation of the Antitrust Commission, the existence of cartels is defined by the presence of competitors of the same relevant market that make arrangements in order to fix prices or production quotas, or to distribute market shares, with the sole purpose of restricting competition. The Antitrust Commission has recently started to apply the conscious parallelism theory in some of its decisions.

Comisión Nacional Defensa de la Competencia (Docket No. SC, C 1216 XLI) and *Recreativos Franco s/ apelación resolución Comisión Nac Defensa de la Competencia* (Docket No. R 1170 XLII and R 1172 XLII), both dated 5 June 2007.

6.5.6 Economic Concentrations (Mergers and Acquisitions) - Administrative Control

The Antitrust Law provides that certain transactions resulting in economic concentrations (*“concentraciones económicas”*) require the prior approval of the Antitrust Commission. Transactions requiring such approval are those resulting in the assumption of control of one or more companies by means of any of the following acts:

- (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 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 Commission applies where the relevant group of companies involved has a “volume of business”² in Argentina of over A\$ 200 million.

In relation to transactions which take place abroad, the Antitrust Commission has indicated that such transactions must be notified if both parties carry on business in Argentina, either through a corporate presence or through sales made in Argentina.

In the event that a transaction meets the notification criteria, it must be delivered 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. There is currently no filing fee. If the parties do not comply with this requirement, they will be subject to a fine of up to A\$ 1 million for each day they fail to comply.

Upon notification, the Antitrust Commission may decide within 45 days whether to (i) approve the transaction, (ii) approve the transaction but impose conditions; or (iii) reject the transaction. However, the Antitrust Commission is currently enforcing a “stop-the-clock” interpretation, by means of which 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 Antitrust Commission to issue a resolution is approximately 24 months.

6.5.7 Transactions Exempt 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 per cent of the shares;³
- (ii) the acquisition of bonds, debentures, non-voting shares or debt securities;

² “Volume of Business” means annual sales net of sales discounts, Value Added Tax and other taxes related to the volume of business.

³ The Antitrust Commission has interpreted this exemption by means of Advisory Opinion No. 824 (September 14, 2010) where it said that those transactions in which the acquirer already held exclusive control over the target company are not notifiable, regardless of the specific shareholding.

- (iii) the acquisition of wound-up and liquidated companies (that performed no activities in Argentina during the preceding calendar year);
- (iv) (gratuitous transfers of goods to the Argentine state, provinces, municipalities and the city of Buenos Aires;
- (v) the transfer of goods among mandatory heirs, by acts among living persons or by cause of death;
- (vi) the acquisition of only one company by only one foreign company that has no assets or shares of other companies in Argentina; 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 A\$ 20 million, provided, however, that the exemption would not apply if any of the involved companies were involved in economic concentrations in the same relevant market for an aggregate of A\$ 20 million in the last 12 months or A\$ 60 million for the last 36 months.

6.5.8 Procedure

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

6.5.9 Penalties and Sanctions

The Antitrust Commission may apply fines and can also request a judicial order to liquidate or to require the spin-off of companies infringing the provisions of the Antitrust Law. 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.

6.5.10 Further Developments and Outlook

There are at least three draft bills to amend Law No. 25,156 currently being developed.

7. Labor and Immigration Laws

7.1 Labor Laws

Employer-employee relationships in Argentina are mainly governed by the Argentine Constitution and International treaties and conventions, 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.

7.2 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 minimum wage per month. For full-time workers, the minimum wage as of June 2016 is A\$ 6,810, A\$ 7,560 as of September 2016 and A\$ 8,060 as of January 2017. For daily workers, A\$ 34.05 per hour as of June 2016, A\$ 37.80 as of September 2016 and A\$ 40.30 as of January 2017. By law, employees are entitled to a 13th Month Pay (*"aguinaldo"*) paid in two installments, in June 30 and December 18 each year, equivalent to 50% of the highest monthly wage earned during the previous six month period. Typically, the standard working week is from 40 to 48 hours, 8 working hours per day on average. Workers earn overtime pay for work performed in excess of the standard working week. Overtime pay rates are 50% on the base rate on normal work days and 100% of the base rate on Saturday afternoons, Sundays and official holidays. Directors and managers, however, are exempt from workday limitations and, therefore, they are not entitled to collect overtime payments either.

7.3 Contributions and Withholdings

Pursuant to Argentine law, employers and employees have certain obligations to make social security contributions for family allowances, medical services and pension and unemployment benefits. In addition, according to many collective bargaining agreements, union contributions of 1% to 2.5% may be withheld from employees' salaries. The mandatory social security withholdings and contributions are calculated as a percentage of the employee's remuneration. Regarding employee's contribution, the base to calculate them has a cap of A\$ 56,057.93. 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 could be exempt from making pension fund contributions.

7.4 Vacations and other 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 for. In addition, employees are entitled to short leaves of absence in the event of marriage, birth, death of a close relative and high school or university examinations.

Female employees enjoy certain additional rights; the most notable is maternity leave of 45 days before and 45 days after childbirth. Furthermore, during maternity leave, employees are entitled to certain family allowances.

In the event of inability to work due to illness or accidents which are non-work related, employees are entitled to their full salaries for a period which may vary from 3 to 12 months, depending on the number of years they have worked for and the existence of a dependent family.

7.5 Trial-Period Hiring

Employment contracts may be for an indefinite period or for 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 an obligation to make a severance payment. However, the terminating party is obliged to give a fifteen-day prior notice.

7.6 Termination of Labor Contracts

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

In indefinite term employment contracts, the employer may dismiss an employee at any time upon giving the employee prior notice of fifteen days (if the employment contract is terminated during the trial period), one month (if the period of service is greater than the trial period but less than five years) or two months (if the period of service is greater than five years). This notice can be substituted with a salary payment equivalent to the salary otherwise owed for the period of prior notice. In case no prior notice is given and the dismissal takes place on a day different from 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.

Furthermore, the employer is required to make severance payments to the employee based on the employee's highest ordinary monthly salary earned 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 to the employee one month's salary for each year of employment or period worked in excess of three months for which the employee worked for such employer. In any event, the severance payment cannot be lower than once the ordinary highest monthly salary.

If an employee is dismissed for gross misconduct, no severance payment or prior notice is required; however, the burden of proof lies with the employer to show that gross misconduct occurred.

7.7 Work Risk Insurers ("ART")

In 1995, Argentine law established a system to reduce workplace risks and to indemnify employees who become ill or injured at work. Pursuant to Law No. 24,557 (LRT), all workers employed in the private sector (as well as certain other employees) are generally protected by its provisions. 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 (*Aseguradora de Riesgos del Trabajo* or "ART"). At present, very few companies provide self-insurance for their workers. When an ART provides coverage, it must compensate the injured worker in accordance with the requirements of the LRT, and must also provide medical and pharmaceutical attention, prosthesis and orthopedics, rehabilitation, occupational re-classification, and funeral service benefits.

The ART is financed by monthly payments made by the employers of insured persons.

A recent amendment to the LRT, introduced by Law No. 26,773, published on October 26, 2012, sets forth that the employer may also be held liable for the damages suffered by the employee whilst performing duties. In fact, the employee now has the option to either file a claim against the ART seeking compensation within the LRT system or else against the employer as a result of civil responsibility derived from an employee's accident and/or work-related illness.

7.8 Immigration Controls

7.8.1 Foreign Workers

Any foreign person wishing to reside and work in Argentina must obtain a residence permit from the Argentine Immigration Board. There are two categories of resident: (i) permanent resident; and (ii) temporary resident.

In principle, permanent and temporary residence permits 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 the conversion of the immigration status. If the applicant prefers to apply for a permanent or temporary residence permit at the consulate, such 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 Immigration Board through a third party on behalf of the applicant.

7.8.2 Permanent Residence

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

7.8.3 Temporary Residence

A permit for temporary residence 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 in order to work in the country the applicant and his or her family must provide certain personal data and documents. In addition, the applicant has to be sponsored by a local company, for which the applicant will work. Such company must be registered to sponsor foreign applicants at the RENURE (Registry for the Sponsorship of Foreign Expatriates). To obtain RENURE registration, the company must file certain documentation and provide corporate information. The applicant should also file personal documentation such as birth and marriage certificates and a certificate showing he/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.

7.8.4 MERCOSUR Nationals

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

8. Environmental Laws

8.1 Introduction

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

Under the amended Sections 41 and 43 of the Constitution, all Argentine inhabitants have both the right to an undamaged environment and a duty to protect it. The primary obligation of any person held liable for environmental damage is to rectify the damage according to and within the scope of the applicable law.

According to the Constitution, the federal government sets minimum standards for the protection of the environment and the provinces are allowed to establish specific standards and implementing regulations. Provincial standards cannot be lower than those established at the federal level.

The following are the main laws dealing with the protection of the environment at a federal level.

8.2 Environmental Policy Law

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

This law, which is applicable throughout the entire country, is used for the interpretation and application of specific legislation, which legislation shall remain in effect as long as it does not oppose the principles and provisions contained in this law.

According to one of the minimum standards provided in Law No. 25,675, any work or activity capable of significantly degrading the environment or its components or which may adversely affect the quality of life, shall be subject to an environmental impact evaluation prior to its execution or performance.

Law No. 25,675 further provides that people or entities engaged in activities which may entail a risk to the environment must purchase and maintain insurance coverage for environmental damages. This mandatory environmental coverage has been implemented through Decree No. 1,683/2012.

According to Law No. 25,675, where environmental damages have a collective impact, any affected person, the ombudsman, non-governmental environmental organizations and the federal, provincial and municipal agencies are entitled to request before a court that any damages be remedied. This law entitles individuals to request before a court the cessation of any activities which cause collective environmental damage.

8.3 Industrial Waste

Law No. 25,612 on "Integrated Management of Industrial and Service Industry Waste" which came into effect in July 2002 covers minimum standards related to the management of industrial and service industry waste. Law No. 25,612 unifies under a single regime the management of waste generated in industrial processes, without making any distinction between "hazardous industrial waste" (see paragraph 8.4. below) and waste that does not meet the definition of hazardous.

To this end, Law No. 25,612 provides for minimum environmental protection requirements for integrated management (generation, handling, storage, transport and treatment or final disposal) of waste of industrial origin and from service industries generated anywhere in Argentina.

8.4 Hazardous Waste

Law No. 24,051 on Hazardous Waste regulates the production, handling, transport, treatment and disposal of hazardous waste generated in areas subject to the jurisdiction of the federal government or where the waste may adversely affect more than one province, for example, if the waste is to be transported from one province to another.

The law provides for the creation of a National Registry where all persons responsible for the production, transport and disposal of hazardous waste must register. Once a person is registered, they receive an environmental permit which they must renew on an annual basis. Producers must pay a fee established by law and calculated utilizing a formula based upon the danger or quantity of hazardous waste produced and other relevant criteria.

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

8.5 Air Pollution

Federal Law No. 20,284 (the "Clean Air Law") applies in the federal jurisdiction and in those provinces which have adopted the provisions of this law. The Clean Air Law establishes general principles for the treatment of sources capable of contaminating the atmosphere. Enforcement of this law is vested in the respective national, provincial or local health authorities. The necessary complementary rules and standards have not yet been adopted, so the law has had little practical effect.

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

8.6 Water Protection

No specific national legislation on liquid effluents has been enacted. However, in the provinces, the City of Buenos Aires, certain municipalities and other specific areas governed by special regimes (e.g. ACUMAR in the *Matanza-Riachuelo* Basin), there are regulations which prohibit industrial establishments from commencing activities or expanding existing facilities, even on a provisional basis, if such action were to result in the discharge of waste into water courses and if the facilities did not satisfy the requirements provided in the regulations.

In November 2002, the Argentine Congress passed Law No. 25,688 on “Environmental Management of Waters”, which provides for certain minimum environmental standards for the preservation of water and its uses although very few specific standards are established therein.

According to Law No. 25,688, a permit must be obtained from the competent authority for the use of surface and underground water.

Law No. 25,688 provides that a federal enforcement agency shall determine: (i) maximum limits for contamination and protection of aquifers; (ii) instructions for the refill and protection of aquifers; and (iii) the fixing of parameters and environmental standards for the quality of waters.

8.7 Polychlorinated Biphenyls (PCBs)

Another law which provides environmental minimum standards is Law No. 25,670 of October 2002 which regulates the management and elimination of polychlorinated biphenyls (“PCBs”). Law No. 25,670 forbids the entry of PCBs and machines containing PCBs into Argentina as well as the installation of machines containing PCBs.

With respect to the PCBs already existing in the country, this law provides that their holders as well as those who market and manufacture PCBs must register with a national registry created for these purposes and every two years they must update the information provided therein.

Pursuant to Law No. 25,670, those who carry out activities or render services which require the use of PCBs must contract an insurance policy to guarantee the remediation of possible environmental damages and health damages that such activities may cause.

8.8 Native Woods Protection Law

In 2007, the Federal Congress enacted Law No. 26,331 for the protection of native woods that are subject to federal jurisdiction. Over the past few years, almost all provinces have enacted their own specific legislation with equal or higher standards than those provided at a federal level. Buenos Aires Province has drafted a bill, which has not yet entered into force.

According to Federal Law No. 26,331, native woods are classified in three categories: red, yellow and green. While clearing native woods of the red and yellow categories is forbidden, those in the green category can be the object of sustainable use if they comply with a “Plan to Approve Change of Use of the Soil” which must be approved by each province. Certain native goods of the yellow category can be classified for these purposes as of the green category.

Every project concerning the clearing of trees or the sustainable use of native woods must be approved by the appropriate provincial agencies for which purpose an Environmental Impact Assessment Study has to be approved and a public hearing must be held.

8.9 Law for the Protection of Glaciers

Federal Law No. 26,639 was enacted in September 2010. It provides the minimum standards for the protection of glaciers and the periglacial environment in order to preserve them as water resources for

human consumption, agriculture and protection of biodiversity. Also those areas are considered as scientific information source and as tourist attraction.

This Law provides that glaciers are public goods and disposes the creation of the National Glacier Inventory where all the glaciers and periglacial areas must be identified for suitable protection and control. Decree No. 207/2011 regulates said inventory.

Furthermore, according to the Law, activities that may affect the natural condition or its function as a water resource and those that may entail their destruction or transfer or interfere with its advance are prohibited in glaciers and periglacial areas. In particular, the following actions: 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; d) the establishment of industries or the development of industrial works or activities.

Notwithstanding, all the allowed activities carried out on glaciers and periglacial areas, are subject to an Environmental Impact Assessment and a Strategic Environmental Assessment. This latter is defined by Decree No. 207/2011.

Finally, the Law imposes sanctions upon those who infringe same, which may include fines, suspension of permits and final cessation of activities.

8.10 Protection of the Environment in the Event of Forest Fires

Law No. 26,815 sets forth minimum standards for the protection of the environment in the event of forest fires and fires in rural areas.

This law creates the Federal System for the Handling of Fires whose purposes include to protect the environment from damage caused by fires and to implement mechanisms that ensure an efficient participation of the State in the prevention and fighting of fires.

Law No. 26,815 creates another agency, the National Service of Fire Management, which is entrusted with the development and implementation of a national fire alert system.

8.11 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 Federal Government, public utility companies and independent governmental bodies holding environmental information are required to provide such information to any person who requires it within 30 business days as from formal request.

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

8.12 Household Waste

Law No. 25,916 regulates the minimum environmental protection standards for the overall management of household waste of residential, urban, commercial, medical care, health, industrial or institutional sources. Law No. 25,916 pursues the achievement of a proper and rational management of household waste.

8.13 Environmental Tort Law Rules

The Civil and Commercial Code defines the right to an undamaged environment as a collective right and forbids the abusive exercise of individual rights affecting the environment.

Pursuant to the Civil and Commercial Code any injured person may seek damages from the owner or keeper of an asset that produces environmental damage. Likewise, the transferor of an asset which has a hidden defect and later causes environmental damage may be liable after the transfer. The 5-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 case of environmental claims.

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

Damages caused as a consequence of dangerous activities are subject to a strict liability regime similar to that applying to damages caused by or with dangerous objects. Hence, the party performing a dangerous activity or benefiting from it may be held liable for the damages caused to the environment as a consequence of said activity.

The Civil and Commercial Code provides also general law principles, such as an emphasis on the good faith principle, the underpinning of the prohibition on abusive exercise of rights when the environment or collective rights are affected, the supremacy of general interests over individual ones and the establishment of the principle of damage prevention.

Lastly, the Civil and Commercial Code provides joint liability for damages caused by a person who is part of a group or by an activity performed by a group.

Under Law No. 25,675, in the case of collective environmental damages caused by legal entities, tort liability can be extended to their managers, directors, statutory auditors and/or other officers who participate in the company's decision making process depending upon their level of participation. In the event of damages caused by several parties (e.g., several industries polluting the same river), joint and several liability may be assessed.

8.14 Criminal Liability

In Argentina, persons 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 utilized these provisions in the Criminal Code to sanction the discharge of substances which are hazardous to human health.

Furthermore, Law No. 24,051 on Hazardous Waste contains criminal provisions that have been considered applicable regardless of the place where the waste has been produced and are applicable nationwide. According to these provisions, anyone who jeopardizes human health, or poisons, pollutes or contaminates soil, water, the atmosphere or the environment in general with hazardous waste, may be punished by imprisonment and fines.

8.15 Local and Multi-jurisdictional Authorities – Increasing Controls

In addition to the environmental provisions included in provincial constitutions, the Provinces and the Autonomous City of Buenos Aires have enacted specific regulations (Laws, Decrees, Resolutions, etc.) addressing a wide spectrum of environmental matters, including permitting management of hazardous substances, wastes, gaseous emissions and liquid effluents, and handling of certain equipment, among others. The provinces have also legislated on the environmental aspects of certain industrial activities even though these activities are subject to federal jurisdiction (i.e. oil & gas, mining, power transmission etc.).

In addition to federal, provincial and municipal bodies engaged in environmental matters, a number of multi-jurisdictional agencies have been created in recent years. One example is the ACUMAR (*Autoridad de Cuenca Matanza-Riachuelo*), formed by the Federal Government, the Province of Buenos Aires and 14 municipalities to prevent and control industrial emissions in the area surrounded by the *Matanza-Riachuelo* river in the southern limit of the City of Buenos Aires with the province of Buenos Aires.

Moreover, certain provinces have set up inter-jurisdictional agencies which have been entrusted with the environmental protection of rivers running across the territories of different provinces.

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

8.16 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.

9. Foreign / International Aspects

9.1 The Foreign Trade Regime

9.1.1 Mercosur

On March 26, 1991, Argentina, Brazil, Paraguay and Uruguay signed a treaty (the Mercosur Treaty) creating a single market between the four countries with a common external tariff. Full membership for Venezuela became effective on July 31, 2012. Mercosur represents a total population of approximately 295 million individuals, living in an area covering more than 15 million square kilometers.

The objectives of the Mercosur Treaty are:

- (i) the free transit of production goods, services, persons and capital between member states by eliminating customs duties and lifting non-tariff restrictions on the transit of goods, along with other measures with similar effects;
- (ii) the fixing of a common external tariff ("*Tarifa Externa Común*" or "TEC") and the adoption of a common trade policy with regard to non-member states; and
- (iii) the coordination of macroeconomic and sectorial policies of member states relating to foreign trade, agriculture, industry, taxes, the monetary system, monetary exchange rates, capital investments, customs, services, transport and communications and any other issues which may be agreed upon, in order to ensure free competition among member states.

To date, Mercosur has achieved a free trade zone with respect to most products. There are products, however, considered to be "sensitive" and consequently excluded, which are still subject to tariffs, which are being reduced each year (such as sugar, automobiles and capital assets). Every year new products are included under the TEC.

9.1.1.1 Additional Mercosur Agreements

Bolivia became an accessing member on December 7, 2012. Chile, Colombia, Ecuador and Peru are associate members of the Mercosur.

9.1.2 Customs Regulations

Argentina and the other Mercosur member countries have adopted the International Classification of Goods and are members of the World Trade Organization ("WTO"). WTO regulations on customs valuation, labeling, and fair trade practices (antidumping, safeguard measures, and countervailing duties, amongst others) are therefore applicable to Argentina.

Pursuant to Argentine customs regulations, most goods imported into Argentina are subject to prior payment of Customs duties.

In order to clear Customs, all imports of goods are subject to the Import Monitoring System (“*Sistema Integral de Monitoreo de Importaciones*” or SIMI after its acronym in Spanish). The SIMI is in force since December 2015 and replaces the Prior Import Sworn Statement (“*Declaración Jurada Anticipada de Importación*” or DJAI by its acronym in Spanish). Specific goods, such as food, chemicals and medicine, may require additional authorizations by regulatory agencies in order to be imported.

Since December 2015, the Argentine Government has reinstated automatic and non-automatic import licenses (“LAI” and “LNA” respectively after their acronym in Spanish).

The LNA applies to a wide variety of products, including but not limited to textile, footwear, toys, domestic appliances, motorbikes, and automobile parts.

In general, no import duty is payable in the case of goods originating from a Mercosur member state.

Imports of services require obtaining approval of a Prior Sworn Services Statement that must be filed with the Tax Revenue Agency.

In March 2002, the Argentine Government imposed duties on the exportation of goods. Resolution No. 11/2002 issued by the Ministry of Economy, as amended, levies export duties on the exportation of goods.

Specific foreign exchange rules apply to payments related to imports and exports of goods and services.

9.1.2.1 Import Monitoring System - SIMI

On December 22, 2015, the Federal Tax Authority (“AFIP”), published Regulation 3823 (“Regulation 3823”) in the Official Gazette. Regulation 3823 created the SIMI.

The SIMI System creates an obligation for importers to file the information included in the SIMI with the AFIP, prior to issuing the purchase order, production order or similar document with its foreign counterparty. The information included in the SIMI is available to all Agencies which adhere to the SIMI system and those Agencies will be able to make objections to the import. The importer will not be able to issue the purchase order or similar document unless the SIMI has been approved by all Agencies which have adhered to the SIMI System. An approved SIMI is a pre-requisite for applying for a non-automatic import license.

The importer has the obligation to file a SIMI in connection with all final imports unless such import is exempted. Exemptions to the SIMI are few and not economically relevant for most importers (e.g. samples, donations, imports by courier, etc.) but only final imports are subject to the SIMI system.

The SIMI filing should be made through the MALVINA system (“SIM” by its acronym in Spanish) and is regulated by the AFIP. Those governmental agencies willing to adhere to the SIMI System have to enter into an agreement with the AFIP.

Agencies that adhere to the SIMI system must issue their observations within 10 working days from the filing of the SIMI. In the event that no agency objects within such term, the SIMI will be considered approved and the import process will continue. If there are objections, the importer must solve the objection directly with the agency.

Once approved, the importer will be able to make an import under an approved SIMI within 180 calendar days from its filing. This term may be extended.

9.1.2.2 Automatic and Non-Automatic Import Licenses – LA and LNA

In December 2015, the Ministry of Production reinstated automatic and non-automatic import licenses (“LAI” and “LNA” respectively by their acronym in Spanish).

The general rule is that 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 System and do not require any additional filing.

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

If the product is subject to an LNA, importers have 10 business days to complete an additional form which will depend on the product to be imported. This LNA is also filed online in the SIMI System and is 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 System and will have to reply to such observations.

Once approved, the LNA will be valid for 180 calendar days.

9.1.2.3 Service Prior Sworn Statement – DJAS

A similar system to the DJAI is applicable to services under the Services Prior Sworn Statement (*Declaración Jurada Anticipada de Servicios* or “DJAS”) system. Regulation 3276, as amended, published by the AFIP on February 22, 2012 (“Regulation 3276”) provides that Argentine residents who contract services from foreign residents must file a DJAS if the service to be provided: (i) is for an amount of US\$ 100,000 or more per year; or (ii) results in instalments of US\$ 10,000 or more per month; or (iii) for an undetermined amount.

Regulation 3276 also provides that Argentine residents who render services to foreign residents must file a DJAS, but such obligation has not been regulated yet.

For the purpose of the DJAS system an Argentine resident is a person who qualifies as Argentine resident under the Argentine income tax regulations.

The information included in the DJAS will be available to the agencies which adhere to the system. The agencies will have to give their opinion on the DJAS within the term to be established in the adherence document and the applicant will have to solve the objection directly with the agency.

9.1.3 GATT / WTO

Argentina, by enacting Law No. 24,425, approved on December 7, 1994, the Final Minutes (“the Minutes”) which incorporated the items agreed in the Uruguay Round of Multilateral Trade Negotiations, and the Marrakech Agreement, both of which were held under the auspices of the WTO.

Law No. 24,425 introduced into the Argentine legal system the Agreements on Antidumping, Countervailing duties, and Safeguard Measures, in accordance with Sections VI and XIX of the GATT Agreement 1994.

9.1.3.1 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 domestic market. The comparison between the “export price” and the “comparable price” 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 involving products produced in countries which do not have a market economy are regulated by Decree No. 1219/2006.

Argentina’s anti-dumping investigation procedure follows a double-agency system: i) the *Dirección de Competencia Desleal* (“DCD”) is the agency with jurisdiction to determine whether there is dumping; and ii) the *Comisión Nacional de Comercio Exterior* (“CNCE” or “Commission”) is the agency with jurisdiction to determine whether there is injury (or threat of injury) to the domestic industry and whether there is a causal relationship between dumping and the injury to the domestic industry. The CNCE also has jurisdiction on the definition of the investigated and like products and the representativeness of the domestic industry.

In order to impose anti-dumping duties, it is necessary to prove the existence of dumping, injury (or threat of injury) to the domestic industry and the causal relationship between both. 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 an industry. When such requisites are met, the Ministry of Economy and Public Finance decides whether to impose Anti-dumping duties or not. The decision of not imposing Anti-dumping duties, even when the legal requisites are met, may be grounded on international policy considerations.

9.1.3.2 Safeguard Measures

Safeguard measures represent a tool that can be used in certain specific circumstances by a WTO member country as a means to provide the national industry with a “*protection period*” to enable it to attain greater competitiveness in international markets through a readjustment process. Since safeguard measures are not measures directed at counteracting unfair trade practices from a specific country, they are applied to all imports of a particular product, regardless of country of origin.

The Safeguard procedure is regulated by Decree No. 1059/1996. Procedures involving products from countries which do not have a market economy are regulated by Decree No. 1859/2004.

The DCD and the CNCE are also responsible for the Safeguard procedures. In order to impose safeguard measures, it is necessary to prove the existence of a causal relationship between the increases of imports of the product under investigation and the injury or threat of injury to the domestic production of such product.

Since safeguard measures are not directed at a specific country, the application of such measures under the safeguard procedure is conditional upon compliance with certain requirements.

9.2 International Treaties

According to Sections 31 and 75, § 22 of the Argentine Constitution, international treaties, upon approval by Congress and ratification by the Government, take precedence over federal and provincial laws.

Argentina is a party to many international treaties including several treaties 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.

9.3 Choice of Law and Jurisdiction

9.3.1 Choice of Law

As a general rule, the Civil and Commercial Code permits parties to an international contract to select the laws that will govern their agreement except in the case of consumer contracts.

The parties can 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 upon the application of principles of international commercial law, such as the UNIDROIT Principles for International Commercial Contracts.

However, the choice of foreign law will only be valid to the extent that it does not agree 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 Civil and Commercial Code 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 its performance. If such 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 local laws (the place where the real estate is located or registered). The same principles apply with respect to movable property permanently located in Argentina.

Finally, the Civil and Commercial Code also contains specific choice-of-law rules in relation to securities, inheritance, family affairs, legal acts, and consumer relations.

9.3.2 Choice of Jurisdiction

The Civil and Commercial Code allows the parties to an international contract choose a jurisdiction - either a foreign court or arbitration tribunal - other than Argentina for the settlement of any disputes arising under such contract when the dispute relates to pecuniary rights.

In the absence of a forum selection clause by the parties to a contract 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, or (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 are vested with exclusive jurisdiction to hear all insolvency proceedings relating to debtors domiciled in Argentina or whose principal place of business is Argentina, disputes involving property located in Argentina and those related to 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, or whose principal place of business is in Argentina.

In this matter the Civil and Commercial Code 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 limitation. In addition, it has also legislated on international *lis pendens*, international cooperation and procedural assistance between foreign and local courts.

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

Lastly, 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. In this sense, the Civil and Commercial Code expressly grants equal procedural treatment for foreign nationals who litigate in Argentina.

9.4 Enforcement of Foreign Judgments

If an international treaty for the enforcement of foreign judgments or arbitral awards exists between a foreign country and Argentina, the rules of such treaty will prevail. In the absence of such a treaty, the National Code of Civil and Commercial Procedure (the "CPCC") will be applicable⁴ 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 where the matter at issue is to be debated before a provincial court. Unless otherwise stated herein, this analysis of the recognition of foreign judgments concerns federal procedure rules (*i.e.*, the CPCC) which are, in principle, applicable when a foreigner is involved.

9.4.1 Requirements

Subject to certain requirements, which are set out in Section 517 of the CPCC, Argentine courts will enforce foreign judgments resolving disputes and determining the rights and obligations of the parties to an agreement. The requirements which a foreign judgment must meet in order to be recognized in Argentina without further discussion of its merits are as follows:

- (i) the judgment must have been issued by a court considered competent by the Argentine conflict of laws principles regarding jurisdiction, 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, personal property in dispute 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 established in accordance with the requirements of Argentine law;
- (iv) the judgment must not violate any principles of public policy of Argentine law;

⁴ Until the issues raised by the new Charter for the Autonomous City of Buenos Aires have been resolved.

- (v) the judgment must not be in conflict with a prior or simultaneous judgment of an Argentine court; and
- (vi) reciprocity is not required for an Argentine court to recognize a foreign judgment.

Argentine courts do not automatically acknowledge the foreign court's original jurisdiction over the matter. As indicated in (i) above, the competency of the jurisdiction of the foreign court that rendered the judgment is analyzed according to Argentine rules regarding jurisdiction.

9.4.2 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 (which must be 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 The Hague Convention on the Abolition of Legalization of Documents, the authentication by the Argentine consulate may be substituted by the Apostille provided for in the aforementioned Convention. All documents in a language other than Spanish must be translated into Spanish by a translator registered in Argentina to be admitted by a local court.

The amounts expressed in foreign judgments need not be converted to local currency. A court tax shall have to be paid by the party seeking enforcement and costs and expenses will be charged to the party that is defeated in this proceeding.

9.4.3 Immunity

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

9.4.4 Arbitration

Foreign arbitral awards are recognized in Argentina subject to the same requirements applicable to the recognition of foreign judgments. If these requirements are met, an Argentine court will accept arbitral awards (either at law or in equity) rendered outside Argentina.

Argentina is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) with reservations regarding reciprocity and commercial disputes. Additionally, Argentina has also acceded to the Inter-American Convention on International Commercial Arbitration of 1975 and the Mercosur International Commercial Arbitration Agreement of 1988.

10. Security Interests

10.1 General

Security interests under Argentine law may be obtained through mortgages, pledges (including registered and floating pledges), security assignments and trusts. Security may be taken over a wide variety of properties, such as movable and immovable property, securities, trademarks, shares, cash and receivables. Nevertheless, certain assets subject to immunity may not be the subject of security interests.

10.2 Mortgages

Under Argentine law, a mortgage may be established over real estate, ships and aircraft. A mortgage will generally secure the principal amount, accrued interest, and other related expenses owed by a debtor to the creditor. The maximum amount of the mortgage and the obligation secured must be certain and determined. Conditional, future or undetermined obligations are permitted to be secured, provided that a maximum amount of the guaranty is determined upon creation of the mortgage. All mortgages must be registered in the relevant registry in order to become effective *vis-à-vis* third parties. Mortgaged property may remain in the possession of the mortgagor (*i.e.*, its owner).

10.2.1 Mortgages over Real Estate

Mortgages over real estate may only be created by means of a notarial deed executed before a notary public. The mortgage deed must then be filed for registration with the Public Real Estate Registry of the jurisdiction where the property is located. Only upon registration the mortgage is effective *vis-à-vis* third parties.

10.2.1.1 Priorities

Under law, mortgages grant the registered mortgagee a first priority right over the underlying real estate as from the date upon which the mortgage is executed before a notary public, provided that the filing for registration is submitted within 45 days as from the 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 except for a few exceptions. Priority is given according to the chronological order in which each mortgage is registered.

10.2.1.2 Foreclosure

Foreclosure of a mortgage is effected through a special summary proceeding which provides for the sale of the property through a public auction. Foreclosure may be conducted by out-of-court proceedings under certain conditions. Foreclosure of a mortgage (or a pledge) is subject to some special rules if the debtor is subject to a bankruptcy proceeding.

10.2.2 Mortgages over Ships

Mortgages over ships may be created by means of a notarial deed or an authenticated private instrument. The ship mortgage must then be filed for registration with the National Ship Registry in order 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. In addition, Argentina will recognize mortgages which are established outside Argentina to the extent that such foreign state recognizes mortgages established in Argentina.

10.2.3 Mortgages over Aircraft

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

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

10.3 Pledges

10.3.1 General

As a general rule, in order to perfect a pledge over a non-registrable movable asset or document credit, the pledged asset shall be delivered to the creditor or placed in the custody of a third party. The Civil and Commercial Code provides that a pledge must be executed through a public deed or a private agreement with evidence of the effective date of its execution.

The Civil and Commercial Code further provides that upon default under the secured debt, the creditor may sell the pledged asset through a court auction and, in principle, may not obtain ownership of the asset. The creditor who has a pledge over an asset has a priority right to the proceeds from sale of the asset.

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

10.3.2 Registered Pledges

Decree-Law No. 15,348/46, of May 28, 1946 (as ratified by Law No. 12,962 and as further amended), provides for the creation of pledges where the asset pledged may remain in the possession of the pledgor. This results in the creation of the "registered pledge", which includes the "fixed pledge" and the "floating pledge". Fixed pledges affect only the relevant registered assets while floating pledges affect the original pledged goods and 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 in order to be established. They may be established through an authenticated private instrument, using the forms provided by the Registry of Pledges, and must be filed

with the Registry of Pledges. Fixed pledges are under the jurisdiction of the Registry of Pledges where the assets are located and floating pledges are under the jurisdiction of the Registry of Pledges where the debtor is domiciled. The pledge becomes effective *vis-à-vis* third parties only upon the above-mentioned filing.

10.3.3 Foreclosure

Pledge certificates, which are delivered by the relevant public registry, grant the right to initiate summary enforcement proceedings. Claims should 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 which case it is mandatory to file the claim in the jurisdiction where the debtor is domiciled.

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

10.3.4 Pledges of Shares

Pledges of shares are governed by the Civil and Commercial Code and by the General Companies Law.

Pursuant to current 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 must be recorded in the company's or in the registrar's books, whichever the case may be. 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. In the case of shares (or other securities) traded in stock markets, the shares or securities held as collateral may be sold through a stock broker as soon as the pledgor has failed to comply with its obligations under the pledge, after complying the requirements of the Argentine Securities Commission (*Comisión Nacional de Valores*) because in accordance to the interpretation of such entity the sale of shares through an out-of-court proceeding constitutes a "public offering" of securities and therefore it is subject to regulations of the Argentine Securities Commission and the Buenos Aires Stock Exchange that govern public offerings.

10.4 Security Assignments and Trusts

Security may also be obtained by means of security assignments and trusts. Trusts also constitute a means of providing security, since the relevant assets may be placed in trust with a receiver who holds them as a separate estate, which according to the Civil and Commercial Code is not subject to insolvency proceedings of either the settlor, the receiver or the beneficiaries, unless creditors can claim and 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, without limitation, receivables. In the case of 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 such assignment to be effective *vis-à-vis* the debtor and third parties. Such notice must be given to the debtor by either public instrument (*instrumento público*), typically through a notary public, or by private instrument bearing a "true



date” (i.e., a date on which an act occurs from which it inevitably results that the relevant instrument was already signed or could not have been signed at a later time; the test can be produced by any means, and must be rigorously assessed by a court).

According to the Civil and Commercial Code, the rules on pledge of credits are applicable to the assignment of credits as security.

11. Insolvency and Bankruptcy

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

The general provisions of the Bankruptcy Law apply to both legal entities and individuals with a domicile in Argentina (including, without limitation, business organizations in which the government is a shareholder) and 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.

11.1 Out-of-court Agreement

A debtor in a situation of ‘suspension of payments’ (generally unable to service their debt obligations as they become due) or that is undergoing general economic or financial difficulties may reach an agreement with the majority of their unsecured creditors and submit it for court endorsement before the commencement of 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. The agreement shall be binding among the parties even if court endorsement is not obtained, unless otherwise expressly agreed.

Along with the petition for court endorsement, the debtor must submit before the relevant court the following: 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/or administrative proceedings of 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 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.

In order 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 securities holders meeting for each series duly called and convened with required minimum quorum (at least 60% or 30% of the aggregate principal amount of the applicable series, in first call or second call, respectively). Securities holders meetings are subject to the following rules: (i) for purposes of computing the 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 court precedents widely followed 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 on those who have not executed the agreement or have challenged the proceedings and/or the agreement.

11.2 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 performance of any prior reorganization.

In addition, debtors adjudicated bankrupt may (by filing a motion within the ten days following the publication of the bankruptcy adjudication notices) request the conversion of the bankruptcy proceedings in reorganization provided that the bankruptcy was not adjudicated as consequence of the breach of a reorganization plan, while a reorganization proceedings was pending or before one year has elapsed since a court declaration of performance of a prior reorganization.

Along with the petition for reorganization the debtor must submit before the relevant court, among other things: a description and date of commencement of the 'suspension of payments' along with evidence of the signs showing this situation; a statement of assets and liabilities appraised as of the date of the petition duly sworn by a certified public accountant; debtor's financial statements for the last three fiscal years; a list of creditors; a list of judicial and/or administrative proceedings of 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.

Commencement of the reorganization proceedings has the following effects, among others: the court appoints a receiver; all proceedings in connection with pre-petition unsecured monetary claims against the debtor (with certain limited exceptions) are automatically stayed and venue of all such proceedings are consolidated at the court hearing the reorganization proceedings; new claims also grounded on those reasons or titles are precluded to be filed; plaintiffs whose judgments are still pending may elect to continue the lawsuit until a final judgment is obtained or file a proof of claim before the receiver waiving prior proceedings; accrual of interest on pre-petition unsecured claims is suspended; and foreclosure proceedings relating to mortgages and pledges may be initiated or continued in the relevant courts with prior notice to the court hearing the reorganization provided that the secured creditor files proof of such claim with the receiver.

Once a reorganization is commenced, 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 which are 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 a member of the workers elected by the debtor's employees 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, based on which the court will issue a resolution on the admissibility or disallowance of the claims.

Within ten days after 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/exclusivity ninety-day period, extendable up to thirty additional days from the date on which the court's resolution admitting the debtor's proposed creditors classification, during which it must formulate a reorganization plan to each class of unsecured creditors and obtain the consent of the required majorities of creditors.

In order to be confirmed by the relevant court the reorganization plan 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 securities holders meeting for each series duly called and convened with required minimum quorum (at least 60% or 30% of the aggregate principal amount of the applicable series, in first call or second call, respectively). Securities holders' meetings are subject to the following rules: (i) for purposes of computing the 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 court precedents widely followed 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, the court may exercise the cramdown power; therefore, nonetheless confirm the plan if: (i) it was approved by (a) the requisite majorities within at least one of the impaired classes of unsecured creditors; and (b) unsecured creditors representing at least three fourths (3/4) of the aggregate principal amount of the impaired unsecured credits; (ii) the plan does not discriminate the opposing classes by banning the creditors of such classes from choosing among the available alternative reorganization options, if any; or otherwise the consideration received by the opposing classes is not of inferior value than that received by the accepting classes; and (iii) payment received under the plan is not less than the dividend the opposing creditors would receive in the liquidation.

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

Once the plan has been approved by the required majorities, the judge must conduct substantive review of the terms of the plan prior to approving it. Creditors that have not consented to the proposal may challenge the approved plan if they consider that it is abusive or does not comply with the Bankruptcy Law rules. The judge may not approve a plan accepted by the required majorities if considers that it does not comply with the Bankruptcy Law rules or its content is abusive for the creditors.

In addition, a plan duly confirmed may be declared null and void at the request of a creditor filed within the six months after the plan was confirmed 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.

11.3 Salvage Proceedings

Pursuant to Bankruptcy Law, under certain conditions, bankruptcy of certain entities (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 confirmation of its reorganization plan.

If the debtor fails to obtain the requisite majorities and the court does not exercise the cramdown power described above, instead of declaring bankruptcy, the court will open a registry for a five-day period where any creditor, interested party and/or a *Cooperativa de Trabajo* (workers' cooperative formed by the 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 adjudicated bankrupt.

Registered persons/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 twenty-day period registered persons have to obtain the consent of the creditors to their respective plans with the same requisite majorities provided for confirmation of the debtor's original reorganization plan.

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

11.4 Bankruptcy

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

The filing of a petition for voluntary bankruptcy must include, among other things: a description and date of commencement of the 'suspension of payments' along with evidence of the signs showing this situation; a statement of assets and liabilities appraised as of the petition date duly sworn by a certified public accountant; debtor's financial statements for the last three fiscal years; a list of creditors; a list of judicial and/or administrative proceedings of economic nature pending or with an unenforced final judgment; and 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 signs of the 'suspension of payments'. Upon filing of an involuntary bankruptcy petition the court will give notice to the debtor for five days. The petition may be dismissed if during such period the debtor shows to the court evidence that it is not in 'suspension of payments' (*i.e.* through the deposit of the amounts owed to the plaintiff). In addition, after bankruptcy is adjudicated, within the ten days following the publication of the bankruptcy adjudication notices, the debtor may file a motion requesting the conversion of the bankruptcy proceedings in reorganization, provided that the bankruptcy was not adjudicated as consequence of the breach of a reorganization plan, while a reorganization proceedings was pending or before one year has elapsed since a court declaration of performance of a prior reorganization.

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

The commencement of a bankruptcy proceedings has, *inter alia*, the following effects, among others: all proceedings on unsecured claims against the debtor are automatically stayed and venue of all such proceedings are consolidated at the court hearing the bankruptcy proceedings; new proceedings on unsecured claims are also precluded to be commenced; accrual of interest on unsecured claims (other than labor claims) is suspended; interest on secured debts will continue to accrue, but may only be claimed to the extent of amounts realized from the security interest; secured creditors may enforce their pledges or mortgages pursuant to a final judgment, provided that upon a petition of a *Cooperativa de Trabajo* (workers' cooperative) such enforcement may be suspended by the court for up to two years; 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; arbitration clauses are inapplicable except where prior to the bankruptcy adjudication the arbitral tribunal was already constituted; agreements with reciprocal obligations pending are suspended (except limited exceptions); the managers of the debtor or the debtor natural person will be subject to restrictions such as requiring the court's prior authorization to travel outside Argentina and being 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 in the case of reorganizations there is a nominal fee due in connection with such filings. The receiver must promote the formation of a creditors' committee to oversee the liquidation.

In certain circumstances (such as public utilities or in order to avoid damages to the creditors or preserve the assets of the estate, or upon petition of at least two thirds of the debtor's employees organized in a *Cooperativa de Trabajo* (workers' cooperative) to preserve the source of employment) the receiver may decide on the immediate continuation of the debtor's activities as an ongoing concern, subject to court approval. Upon the continuation of the debtor's activities, the receiver or the *Cooperativa de Trabajo* (workers' cooperative), as the case may be, will manage the assets of the estate with powers to perform all acts within the ordinary course of business, but any act beyond this limitation (including incurrence of unsecured or secured debt) is subject to the prior approval of the court.

In the event that there is no decision on the continuation of the debtor's activities the receiver will conduct the liquidation of the assets of the estate. However, prior to the commencement of the liquidation process, the *Cooperativa de Trabajo* (workers' cooperative) may request to the court the purchase of the debtor's equity and compensate the purchase price against their labor claims.

The liquidation may be carried out either by the sale (i) of the entire business as an ongoing concern, (ii) of the bulk of all the estate's assets, or (iii) of 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 property of the estate); (iii) claims with general preference (including certain labor claims and principal on contributions to the social security and taxes); (iv) unsecured claims; and (v) subordinated claims.

After conclusion of the liquidation procedure the receiver prepares a final report, including proposals for distribution of the proceeds among the creditors, and notice thereof is given to the creditors (who may file objections). After all 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 (v) have had an active role in the debtor's bankruptcy; (w) have showed a willful misconduct; (x) have had conflicting interests; (y) have caused an actual diversion of the debtor's assets for its own benefit; and (z) have 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 thereof.

In addition, 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 (so-called 'exaggeration' of the debtor's liabilities), before or after the adjudication of bankruptcy.

11.5 Pre-petition Void or Voidable Transactions

Certain transactions carried out by the debtor within the look-back period are void or voidable. The look-back period is the period from, and beginning on, the date of commencement of the 'suspension of payments' and ending on the date when the debtor files the petition for reorganization or is adjudicated bankrupt; provided that the look-back period cannot extend more than two years from the date immediately preceding the date of the filing of the petition for reorganization or the date of the adjudication of bankruptcy.

The following transactions carried out by the debtor during the look-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.

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

Any transactions in the ordinary course of business made by the debtor or any transactions not within the ordinary course of business and transfers made by the debtor with the authorization of the court during a



reorganization process or during the implementation of the reorganization plan are not subject to the avoidance action.

12. Public Law

12.1 Introduction

Argentina is a federal country, organized under a Federal Constitution very similar to that of the United States of America.

The Federal Government coexists with twenty-four local governments (twenty-three provinces and the City of Buenos Aires).

The Federal 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.

Administrative law is of “local” nature. The Federal 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 Federal Constitution, as well as with the Constitution of the relevant province or of the City of Buenos Aires. However, in most of the cases, provincial administrative law has not been autonomously developed, so generally speaking, the same administrative law jurisprudence and principles are followed both at federal and local level.

12.2 Judicial Review of Administrative Decisions

Argentina's constitutional system and the Federal Supreme Court's case law provide for judicial review of administrative decisions and of the constitutionality of laws. Although this review has been admitted from the very beginning of our constitutional life, its effectiveness has varied throughout the years.

Even though there are no formal barriers to access the judiciary, the court tax (3% of the amount involved without a cap) and the short terms to exhaust administrative remedies (15 days at a federal level) in practice may restrict the judicial review of administrative decisions. The Summary Constitutional Action (*amparo*) is usually an effective tool to by-pass these limitations in cases of manifest violations of constitutional rights. However, a very short term applies also to this remedy (15 business days at federal level). In certain cases, private parties may obtain a court injunction to suspend the effects of administrative decisions.

12.3 Procurement Regulations

Public procurement is considered a typical administrative matter; therefore, it is governed by administrative law. Thus, contracts executed by administrative agencies are governed mostly by administrative law rather than by civil or commercial law. Given the fact 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, *inter alia*: (i) public works contracts; (ii) public service concessions or licenses (i.e. utilities); (iii) supply agreements; and (iii) consulting services agreements, etc.

Generally, government contracts are governed by the rules set forth 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.

The general principle is the need that procurement must be done by means of a competitive bidding process that must ensure 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, certain debt ratios, etc.) for the granting of public contracts. “Buy – Argentine” requirements are also applicable both at federal and local level.

12.4 Public Works and Utility Concessions

Depending on their location and scope, public works and utilities’ contracts may be subject to federal, provincial or municipal regulations. Thus, the authorizations required to carry out public works or to operate a utility may vary from one jurisdiction to another.

Currently, major contracts for the construction and/or the operation of large nuclear and hydropower generation projects are being carried out.

The Federal Government has announced a plan called “*Plan Belgrano*” which includes a number of infrastructure projects to foster the development of the provinces of the north of the country. Such infrastructure projects include, among others, railways, highways, roads, and ports.

12.5 Private Initiatives and Public-Private Partnerships

The Federal Government and some provincial governments as well, have enacted regulations to foster private initiative in public interest-related projects.

Some of these jurisdictions have passed regulations that allow private investors to propose public works or projects to governmental authorities in order to satisfy public needs. Should such proposals be declared of public interest, the private investor who initially filed the proposal receives advantages in the subsequent competitive bidding process.

Legal frameworks for the participation of private investors in the design, construction, operation, maintenance and financing of infrastructure works are in place both at federal level and in some provinces. Both project finance or turn-key schemes are also being contemplated. The Federal Government has also submitted a draft law to the Federal Congress to provide for a more flexible regime for Public-Private Partnerships. Partnerships with governmental entities can also be implemented through the creation of corporations with mixed equity participation.

12.6 State Liability

There is a Federal Law which regulates State and public officers’ tort liability, including State liability for unlawful and lawful actions.

Among others, the Federal Law on State Liability provides direct and objective liability, confirms the concept of *faute de service* applicable to cases of liability due to unlawful action, and the notion of “special sacrifice” for liability due to lawful action.

The new Civil and Commercial Code is consistent with this regulation on state and public officers’ tort liability since both provide that state liability is not governed directly or as default rule by that Code, because it is a matter of public law which must be regulated by the Federal Government and the provinces in their respective jurisdictions.

Argentine provinces and the City of Buenos Aires were invited to adhere to the regulations on state liability, in order to provide for uniform legislation on this matter.

12.7 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 and the public ethics regulations which were enacted by the Federal Government to implement them prohibit and punish offering or granting to government officers any goods or other benefits in exchange for the performance or the failure to perform actions relating to their public duties.

Currently, only individuals can be found liable for bribery/corruption crimes. However, several bills have been submitted to the Federal Congress to provide for corporate criminal/administrative liability for bribery crimes.

12.8 Bilateral Investment Treaties

Bilateral Investment Treaties executed by the Federal Government with most OECD countries grant direct rights to protected foreign investors (e.g. fair and equitable treatment, protection in the case of direct or indirect expropriation, national treatment, most favored nation treatment, etc.) and also provide for international arbitration (under the ICSID or UNCITRAL rules) to obtain relief for acts or omissions adopted by the Argentine Republic, including any of its political subdivisions.

13. Mining

13.1 Introduction

The basic statute which governs mining in Argentina is the Mining Code. The Mining Code was enacted by Law No. 1919 of 1886, and was amended several times thereafter.

As in most Latin American countries, Argentine law is based upon the principle that all mineral deposits are state-owned. Each province or the federal government is considered as the owners of the minerals located within their jurisdictions. However, individuals and legal entities may obtain concessions from such bodies to explore and develop those deposits and may freely dispose of the minerals extracted within the area of the concession. 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 provides for two basic types of mining concessions: exploration concession and development concession.

The first one grants a right to explore and search for mineral resources within a specific territory and furthermore the right to obtain a development concession if a discovery is made during the exploration term. The general provisions of the Mining Code do not apply to oil and gas deposits. In addition, the mining of ores used in the nuclear industry (uranium and thorium), although subject to the Mining Code, must comply with special additional regulations.

The law considers development concessions (including the mine and its deposits, as well as the buildings, machinery, vehicles, etc. used in the development of the mine) to be immovable property distinct from the title to the surface land on which they are located. Once the discoverer's rights are incorporated into public deeds and registered with the Registry of Mines, they provide title to the development concession. Development concessions may therefore 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 over development concessions. Since mineral products are movable assets, once extracted they can be pledged as security for financing purposes.

The law also provides for concessions to be terminated upon the occurrence of certain events.

13.2 Classification of Mines

Mines are classified into three classes according to the type of mineral discovered.

First class mines are those in which the following metals are mined: 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 (such as arsenic, quartz, feldspar, mica, fluorite, calcareous phosphates, sulfur, borates and precious stones) are also included in this category.

Second class mines are divided into two categories: the first type comprises metallic sands and precious stones which are found in river beds and on the banks of water courses, or at tailing dams of abandoned

minerals. Minerals falling into this category may be mined by anyone without having to obtain a concession. The second type includes saltpeter, salines, peat bogs, metals not included in the first class 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 permutic minerals. The owner of the surface rights has a preferential right to deposits falling within this subdivision, but must have his/her claims officially demarcated.

The third class of mines includes mines where the minerals are of an earthy or rocky nature used in the construction and ornamental industries. These deposits belong to the surface-owner.

13.3 Exploration of Mineral Resources

Prior to the commencement of exploration works, the mining company must obtain an exploration concession from the provincial mining authority (whether the land to be explored is public or private property). The exploration concession grants the explorer the exclusive privilege to explore and, eventually obtain a development concession to work any deposit of any mineral (this right is not limited to those mentioned in the petition) discovered within the area of the grant.

13.4 Development of Mineral Resources

If a discovery is made during the course of exploration, the discoverer must register the discovery with the provincial mining authority. This territory may not be explored nor developed by third parties until the end of the staking proceedings.

The next step is to define the final limits within which the concession may be developed. The discoverer must file a petition for a development concession with the mining authority.

13.5 Mining Concessions

13.5.1 Acquisition

Mines are acquired through a legal concession. Mines capable of being acquired through a concession (original acquisition) are: (i) discoveries; and (ii) null and vacant mines.

13.5.2 Effects

A mining concession makes the concessionaire owner of every deposit found within its boundaries. However, the discoverer must inform the Mining Authority of the existence of any mineral different from the one registered. This information is relevant to decide the mining royalty and the capital investment required. It is preferable to exploit a first class mine in land containing second and third class mines. This will enable the concessionaire to exercise the right of accession, to form mining groups, and to acquire the land, among others.

13.5.3 Withdrawal

Mining concessions can be withdrawn by the concessionaire through a *direct and spontaneous act* demonstrating before the Mining Authority the decision not to pursue with the mining works. A written declaration must be also filed with the Mining Authority.

13.5.4 Mining Fee

Mines are awarded through the payment of an annual royalty established by the Argentine Congress and paid to the Federal Government or the Provincial Governments, according to the location of the mines.

13.5.5 Investments Plan

The concessionaire must submit an estimate of the plan and amount of the capital investment to be made to the Mining Authority. Investments must be destined to: (i) the execution of mining labor works; (ii) the building of camps, roads and other constructions for exploration purposes; and (iii) the acquisition of machinery, facilities and exploitation equipment concerning the production capacity to be introduced permanently into the mine.

13.5.6 Termination of the Mining Concession

Mining concessions can expire for the following reasons: (a) lack of payment of the annual fee; (b) lack of filing of the estimation of the plan and magnitude of the capital investment; (c) investments made contrarily to the requirements of the Mining Code; (d) investments lower than 300 times the annual fee; (e) lack of filing of the annual affidavit on the development of the investment plan; (f) fraud of the annual affidavit on the development of the investment plan. (g) lack of compliance with the estimated investments; (h) modification and reduction of the estimated investment without prior notice; (i) withdrawal of assets included in the investment resulting in its reduction; and (k) inactivity of the mine for over four years.

13.5.7 Applicable Regulations to Common Use Substances, Third Class Mines and Nuclear Minerals

Second class minerals are classified into (i) substances preferably awarded to the owner of the land and (ii) common use substances.

The following are common use substances: (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 Government-owned quarries, as long as they are not transferred or bound by an agreement.

For common use of substances in items (a) and (c), no concession, permit or prior notice is required. However, for substances included in Item (b), given the existence of evidence of a previous exploitation, a declaration issued by the enforcement agency is required to determine the common use character of the land.

13.6 Specific Tax Treatment

Mining activities have special tax incentives which should be carefully analyzed in the decision making process for a new investment in the area. Legal statutes on tax incentives provide for: (a) the financing or reimbursement of Value Added Tax payments made by mining companies; (b) a 30-year tax stability regarding taxes in force at the time the feasibility report is submitted; (c) the beneficiaries' right to deduct from their income tax statement 100% of the amounts invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works aimed at 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, construction of plants and equipment required for mining activities; (e) the exemption from paying income taxes derived from profits of the mines and mining rights, used as payment for the subscription of shares of registered beneficiary companies; (f) the exemption from paying taxes on the assets; and (g) the exemption from all import duties and any other taxes due to import capital goods; (h) a 3% cap on royalties, calculated on the "pit-hole" value (similar to NSR royalties) of the mineral extracted, among others.

13.7 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 Rio Negro, which prohibited cyanide use for metal processing revoked said prohibition in, 2008 and 2011, respectively.

14. Energy

14.1 Background: From Regulatory Reform to Emergency Law

In 1992, the power sector was reformed, liberalized and privatized both at federal and provincial levels. At the federal level this reform was instrumented by means of Law No. 24,065 and its regulations –Decrees No. 1398/1992 and 18619/95, and Resolution No. 61/1992, among many others- (the “Regulatory Framework”).

The main features of the Regulatory Framework were the following:

- (i) Vertical division of the power sector into four broad categories: generation, transmission, distribution and demand with cross ownership restrictions between some of these categories.
- (ii) Introduction of competition in power generation activities with an electricity wholesale market (“MEM”) where large users were able to purchase power directly from generators or traders.
- (iii) Privatization of the majority of existing state-owned assets including thermal and hydropower plants and transmission and distribution networks (nuclear power plants and bi-national hydropower plants were excluded from privatization).
- (iv) Creation of an autonomous regulatory agency.

The Regulatory Framework was however affected by Law No. 25,561 (the “Emergency Law”), enacted and promulgated on January 6, 2002. The Emergency Law introduced freezes in public utility rates that are still currently in force. Although significantly affected by the Emergency Law, many of the provisions of the Regulatory Framework are still in force.

14.2 Regulatory Agencies

The Regulatory Framework has split decision-making and enforcement powers between the following entities:

- (i) The Wholesale Energy Market Administrator (“CAMMESA”) whose main functions include the coordination of dispatch operations, determination of wholesale prices, the administration of the economic transactions conducted within the SADI and acting as governmental off-taker in certain power purchase agreements (“PPA”).
- (ii) The National Regulatory Agency for Electricity Matters (the “ENRE”), an autarchic entity created within the Secretariat of Energy, whose main functions include: (a) surveillance of Regulatory Framework compliance; (b) control of service supply standards; (b) stipulation and calculation of rates; (c) authorization of the construction and expansion of new infrastructure; and (d) mandatory initial jurisdiction to hear any disputes arising among the energy market participants.
- (iii) The National Executive, through the Ministry of Energy and Mining and the Secretariat of Energy, has the power to define the general policies and rules that govern the sector.

14.3 Power Generation. The Wholesale Market

The Regulatory Framework allows power generation to be carried out within a competitive market environment. Pursuant to the regulatory framework, hydroelectric generation facilities require that a concession is granted by the National Executive in order to be built and operated, whereas the operation of thermal power generation plants does not require any specific authorization, other than regular planning, regulatory, safety, transmission and environmental clearances.

The Wholesale Energy Market '*Mercado Eléctrico Mayorista*' ("MEM") consists of a spot market and a term market. In the spot market, real values of power supply and demand are traded. CAMMESA dispatches available units according to production-costs, first dispatching the most efficient units. The energy price is passed-through to end-users by the distribution utilities companies. In order to enable this process, a seasonal price is also calculated by CAMMESA. The seasonal price is a stable, quarterly fixed price.

Since 2013, industrial customers must purchase power from CAMMESA rather than directly from generators or traders. The generator's pricing regime has been also amended. As of February 2013, generators are entitled to recover fixed costs and variable costs, calculated pursuant to the power generated by the burnt fuel, plus an additional compensation which varies depending on whether certain availability targets are met.

At the beginning of 2016, new increases in electricity seasonal prices were approved.

14.4 Transmission and Distribution

Distribution and Transmission companies are regulated as public utilities.

Transmission services are rendered by concessionaires that own and operate high and medium voltage transmission lines and consist of the transformation and transmission of the electricity from the generators' delivery points to the distributors' or large users' reception points, as the case may be. The Regulatory Framework mandates that transmission companies are independent from other participants in the MEM, barring them from buying and/or selling power.

Rates charged by electricity transmission companies include: (a) a connection charge; (b) a transmission capacity charge; and (c) a charge that rewards the actual energy transmitted. Incoming revenues from system expansions are regulated separately. Transmission rates are billed to generators or passed through to end customers through distributors, as the case may be.

Distribution companies are in charge of supplying end-users whose consumption level prevents them from being entitled contract their power supply independently.

The main features of the concession agreements for both power transmission and distribution services were: (a) defined service supply quality standards with failure to meet these standards penalized; (b) award of a 95-year concession agreement for monopoly service supply within an area or grid, divided into "management terms" with an initial 15-year term and 10-year subsequent terms; at the end of the stated term, the majority stock of the corporation shall be offered for sale again; (c) the rates fixed by economic criteria: price caps, following pre-determined procedures concerning their calculation and adjustment.

Distribution companies charging end-users comprises the following items: a) the price of purchasing power in the MEM (the seasonal price already described above); b) transmission costs and c) a distribution added value ("VAD") that remunerates the distributor's activity. The VAD represents the economic or marginal cost of the networks available to users, plus operating and maintenance costs of the networks and management

costs, all of them considered within a framework of reasonable business efficiency. The rates so determined must allow an efficient distributor to cover operating costs, to finance the renewal and improvement of facilities, to satisfy growing demand, meet predetermined quality standards and to 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, power transportation and distribution tariffs applicable to services rendered by concessionaires operating under federal jurisdiction were substantially raised.

14.5 Recent Policy Measures and Investment Programs

In late 2015, the National Executive declared the National Electricity System under emergency until December 2017 and entrusted the 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 are rendered under suitable technical and economic conditions.

During 2016, Cammesa S.A., the company which administers the MEM, launched a public tender process to award PPAs to be supplied by thermal generation units. Further rounds are expected to be called for additional base generation capacity.

14.6 Renewable Energies

Law No. 26,190, passed in 2006, has approved a National Regulatory Framework for Renewable Energies. This law has set out a target by means of which 8% of the power consumed in the country must be generated by renewable sources (wind, solar, geothermal, biomass, bio-fuels, etc.) by 2016. Law No. 26,190 provides tax and customs incentives for renewable-energy power generation projects.

The Ministry of Energy and Mining instructed Cammesa to launch a public tender (RenovAr) to award PPAs for up to 1,000Mw in the aggregate to be supplied with power generated from renewable sources. Under the PPAs Cammesa will act as the off-taker; prices are denominated in US Dollars and the projects to which a PPA is awarded under this process will enjoy the tax and customs benefits provided by Law 26,190. A public trust (Foder) will secure the off-taker's obligations under the PPAs and a World Bank Guarantee will provide second tier security to Foder under certain PPAs termination events.

15. Oil & Gas

15.1 Overview

Argentina is a significant player in South America's hydrocarbon market, along with Venezuela, Brazil, Ecuador and Colombia. According to the 2014 edition of the BP Statistical Review of World Energy, Argentina is the second largest natural gas producer and the fourth largest producer of crude oil in Central and South America, based on 2013 statistics. Hydrocarbons, especially natural gas, have historically accounted for a large portion of Argentina's energy matrix.

Hydrocarbon production and reserve rates have been falling since 2004. Since then, Argentina has imported increasing volumes of natural gas and LNG, as well as crude oil and liquid fuels, which were barely imported in the past.

However, recent reports announcing that Argentina has the third highest 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 amount of shale gas resources (802 Tcf) worldwide and the fourth-largest shale oil resources (27 billion barrels).

More than 50% of these unconventional resources are located in the *Neuquina* basin. In addition to its favorable geology, the *Neuquina* basin has certain attributes that favor unconventional development: a long history of oil and gas operations, an established, thriving service sector, and excellent access to domestic and international markets.

15.2 Upstream and Downstream

15.2.1 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 in whose territories they are located. However, the Constitution empowers the Federal Congress to legislate on hydrocarbon matters.

Transfer of hydrocarbon resources from the federal domain to the provinces was implemented in 2006 through Law No. 26,197. The resources that were transferred are those located in the territories of the provinces and in the territorial sea up to 12 marine miles from the base line. The enforcement of exploration permits and the production and transportation concessions granted by the Federal Government over said resources before Law No. 26,197 came into force was transferred to the provinces. Since then, the provinces have carried out the granting, enforcement and control of permits and concessions within their territories.

Offshore resources beyond the 12th marine mile from the base line remain in federal domain and are subject to exclusive federal jurisdiction.

15.2.2 Exploration & Production

Federal Hydrocarbons' Law No. 17,319 of 1967, as amended (the "Hydrocarbons' Law"), and subsequent enacting dispositions establish the basic legal framework for E&P activities. The Secretariat of Energy is the enforcement agency of the Hydrocarbons' Law at a federal level.

The Hydrocarbons' Law has undergone several amendments. The main objectives of the latest amendment approved in 2014 by means of Law No. 27,007 are to provide specific sets of rules for the exploration and development of unconventional resources, for the extension of current concessions and for the granting of new permits and concessions.

Hydrocarbon exploration, development and production require an exploration permit or a production concession granted by the Federal 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.

In order to become a holder of a permit or concession, companies must register with the registries of oil companies kept by the Federal Secretariat of Energy and, in some cases, the corresponding provincial authorities. Registration in these registries is granted on the basis of meeting certain general financial and technical standards.

Exploration permits usually provide for the performance of minimum investments and enable their holders to perform exploration activities. The base term of a permit for conventional exploration is divided into 2 periods of up to 3 years each, plus an extension of up to 5 years. For exploration of unconventional resources, the base term is divided into two 4-year periods, plus an extension of up to 5 years. In the case of offshore exploration, the base term is divided into two periods of up to 4 years, plus an extension of up to 5 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. 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 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, concessions may be extended for successive 10-year periods.

For these purposes, "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: shale or slate rocks —shale oil and shale gas—, compact sandstones —tight sands, tight oil and tight gas—, layers of coal —coal bed methane—.

Holders of permits and concessions are required to pay royalties to the grantor —the Federal or provincial Government, as the case may be— at a 15% rate, in the case of exploration permits, and at a 12% rate, in the case of 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, as the case may be.

15.2.3 Transportation

Transportation of hydrocarbons through pipelines requires a concession or a license from the Federal 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 under two different regulations: the Hydrocarbons' Law that applies to all kinds of hydrocarbons and the Natural Gas Law No. 24,076, applicable only to natural gas.

Under both frameworks, transportation services are defined as a public service, and therefore, cannot be curtailed or interrupted by the carrier, unless a force majeure event or other event that affects the operating conditions of the transportation facilities occurs, and are subject to open access and regulated tariffs.

15.2.3.1 Transportation under the Hydrocarbons' Law

The holder of a production concession is entitled to obtain a transportation concession to transport the hydrocarbons produced thereunder.

A transport concession is granted for the same term as that of the production concession in which it originated: 25 years if it originated from a conventional concession or 35 years if it originated in a concession for production of unconventional resources. These concessions may be extended for additional successive 10-year terms.

Hydrocarbon transportation pursuant to the Hydrocarbons' Law is regulated by Federal Decree No. 44/1991, which expressly provides that transportation facilities operated under concessions granted pursuant to the Hydrocarbons' Law are subject to open access and maximum regulated tariffs.

15.2.3.2 Transportation and Distribution of Natural Gas under the Natural Gas Law

The five main high pressure gas pipelines in the country are divided into two systems on a geographical basis (the Northern and Southern pipeline systems), designed to give both systems access to gas sources and to the main centers of demand, including the greater Buenos Aires region. Gas distribution networks are also divided on a geographical basis into 9 systems. Each of these transportation and distribution systems is operated under a license granted by the Federal Government pursuant to the Natural Gas Law.

The Natural Gas Law governs transportation, storage, marketing and distribution of natural gas and defines transportation and distribution as public services. Hence, transportation and distribution services thereunder are rendered on an open access and non-discriminatory basis and are subject to regulated tariffs.

The Natural Gas Law establishes several restrictions on cross ownership between companies participating 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 current shortfall of natural gas production to meet domestic demand, the transportation and distribution of natural gas is subject to a special regulatory regime aimed at ensuring the proper satisfaction of the demand of protected consumers (domestic and small businesses). Under this regime, natural gas producers are instructed to allocate a determined volume of natural gas to meet the demand of protected

customers. The delivery of gas to other customers (i.e. NGV and industries) is permitted insofar as the demand of protected customers is met.

Transportation and distribution tariffs, including the price of gas delivered to houses and small businesses have been substantially increased.

15.3 Downstream

Whether performed by oil producers or third parties, hydrocarbon refining activities are subject to Law No. 13,660 of 1949, which provides the basic regulatory framework for these activities.

Refining activities are subject to registration requirements established by the Federal Secretariat of Energy. In addition to federal rules, refining activities must comply with provincial and municipal regulations regarding technical, safety and quality standards.

15.4 Market Regulation

The broad regulatory powers provided by Decree No. 1277/2012 to the Commission for Planning and Coordination of the Strategy for the Federal Plan of Hydrocarbons that included cost control and price determination have been substantially limited.

The export of crude oil, natural gas and their derivatives is subject to prior governmental approval.

15.5 Incentive Programs: Gas Plus, Gas Plans and Investment Promotion

The Federal Government established several incentive programs to promote investments in hydrocarbon exploration and production in order to allow the recovery of reserves in the medium and long term. These programs include Gas Plus, Gas Plan I and II and New Projects' Promotional regime.

Gas produced from projects approved under the Gas Plus program can be marketed at prices higher than standard regulated prices and cannot be redirected to protected customers. Since 2016, the benefits under the Gas Plus program will no longer be available for new projects but the projects to which these benefits had been awarded will continue to enjoy them.

Under the Gas Plan, gas producers are divided according to their production size. Producers that increase their natural gas production are entitled to a compensation payable by the government, the amount of which varies according to the additional volumes supplied by the producers to the domestic market.

A promotional regime for New Projects is also available for new tight and shale gas projects. Similar benefits to those available under the Gas Plan are provided by this promotional regime.

Federal Decree No. 929/2013 established a promotional regime available for direct investment projects in hydrocarbon exploration and production encompassing a minimum of US\$ 1,000 million over a 5-year term. This regime is also available for direct investments of 250 million US Dollars or more over a 3-year term.

Benefits include: (i) the right to export a portion of the hydrocarbons produced by the project; (ii) the right to export said hydrocarbons free of export duties (zero rate); (iii) free disposal of the proceeds in foreign currency from the export of said hydrocarbons; and (iv) in the event that, due to a shortfall of hydrocarbons, exports are restricted to the supply of local demand, entitlement to international prices for the hydrocarbons

that could have been exported and were not actually exported. For this purpose, a compensation mechanism payable in local currency shall be established. Under that hypothesis, 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 that were prevented from being exported, including the amounts collected for their sale in the domestic market plus any compensations received under the above mechanism.

Benefits under this regime can be enjoyed as from the fifth or third year, as the case may be, and shall apply to 20% of the production of the project, in the case of onshore projects and up to 60%, in the case of offshore projects.

Other benefits available for the Oil & Gas sector include reductions on import taxes on capital goods and supplies which are essential for the performance of investments.

15.6 Environmental Regulations

According to the distribution of powers among the Federal State and the provinces, the latter are empowered to legislate and regulate environmental matters. Provincial environmental regulations must establish standards which are equal to or higher than those approved by the Federal Congress.

Most of the hydrocarbon-producing provinces have issued specific environmental regulations for the oil industry including unconventional operations.

Pursuant to the latest amendment to the Hydrocarbons' Law, the Federal Government and the provinces shall 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/or transport purposes.

16. Telecommunications

16.1 Control Authority

On December 16, 2014, the Argentine Congress approved a new telecommunications law under the name of “Argentina Digital”, Law No. 27,078 (the “ICT Law”) which, in turn, replaced former Law No. 19,798 (the former Telecommunications Law), as amended, and Decree No. 764/2000, as amended, which had governed the operation of telecommunications companies in Argentina since August 1972, and September 2000, respectively. Law No. 19,798 and Decree No. 764/2000 are only applicable for matters not included in ICT Law.

On January 4, 2016, a Necessity and Urgency Decree No. 267/2015 (“Decree 267”) was published which basically: (i) partially amended the ICT Law and the Audiovisual Communications Law No. 26,522 (the “ACS Law”); (ii) created a new Control Authority called the Enacom (“*Ente Nacional de Comunicaciones*”) to replace the former authorities (AFTIC and AFSCA), an autarchic and decentralized entity under the jurisdiction of the Argentine Communications Ministry, that is in charge of the telecommunications and audiovisual communications industry; and (iii) created a special committee for the purpose of drafting a unified and updated new law that will replace the ICT Law and the ACS Law.

The purpose of the ICT Law is to declare the development and regulation of information technology and communications (“ICT”) and associated resources as a public interest activity, establishing and ensuring complete network neutrality. The aim is to guarantee the human right to communication, giving access to information and communication to all Argentine residents in social and equitable geographical conditions.

It also provides that ICT licensees will be able to provide audiovisual communications services (except for satellite services), and conversely, audiovisual communications services licensees will be able to provide ICT services. However, Decree 267 establishes a temporary restriction for telecom companies with licenses for (i) specific basic landline telephony and (ii) mobile communications providing “Broadcasting Subscription Services”. This temporary restriction runs for two (2) years as from January 1, 2016 plus an additional 1 year upon the decision of the Enacom.

16.2 Key Issues

Until Enacom issues new regulations and except for those already enacted (as described below), Decree 764/2000 is applicable. The main aspects of this Decree are as follows:

16.2.1 Licensing Rules for ICT Services

There is a single country-wide license scheme for the rendering of ICT services to the public, which authorizes the provision of any telecommunications service, fixed or mobile, wired or wireless, national or international, with or without its own infrastructure. The ICT includes a unique license called “*Licencia Única Argentina Digital*”.

ICT services may, however, only be provided after a license has been granted, in respect of the specific services covered by that license.

There are no restrictions on foreign investments in the telecommunications market, other than those established by Law No 25,750 ("Media Ownership Law") of June 18, 2003 for providers of Internet Access Services. For further information in this respect, please see Section 17.3 below.

A monthly fee for control, monitoring and verification is compulsory and payable to Enacom, equivalent to 0.5% of the total revenues earned from the provision of ICT services, net of taxes, interconnection costs and duties (except for this control fee).

16.2.2 Universal Service General Rules

Enacom Resolution No. 2,642/2016 approved the new Universal Service General Rules, replacing prior regulations on this matter.

Basically, the Universal Service is the set of services and programs, variable in time, defined by the Government, for the whole population to have access with a certain quality and at affordable prices, regardless of their location and in spite of social, economic inequalities and physical disabilities.

Each telecommunications services provider is obliged to contribute to a fiduciary fund created to finance the Universal Service of an amount equivalent to one per cent (1%) of its total income derived from the provision of telecommunications services, minus taxes and fees thereto.

16.2.3 National Interconnection Rules

All telecommunications service providers are required to grant interconnection to other telecommunications service providers on a non-discriminatory, transparent and proportional basis, based on objective criteria. The parties may agree on the specific interconnection terms and conditions.

16.2.4 Rules of Administration, Management and Control of the Radio Spectrum

The Rules of Administration, Management and Control of the Radio Spectrum provide that the radio spectrum is an intangible, scarce and limited resource which may be administrated exclusively by the Argentine State.

16.3 Transfer of License or Change of Control

According to Section 13 of the ICT Law, as amended by Section 8 of Decree 267, the parties are permitted to close a transaction that implies a (i) direct or indirect change of controlling shareholdings in an Argentine ICT company or (ii) the transfer of a ICT license ("Telco Transaction"); prior to obtaining Enacom's approval provided that the Telco Transaction is subject to Enacom's post-closing approval.

The parties are required to submit the request for approval to Enacom within 30 days from closing of the Telco Transaction. The Enacom approval may be granted explicit or by deemed approval if the Enacom does not make any official observation within the 90 of the effectiveness of the transfer.

The implementation of a Telco Transaction without the corresponding explicit or deemed approval of the Enacom is subject to revocation of the license by the Enacom.



16.4 Mobile 4G Services

In October 2014, a call for bids for 3G (remaining slots of frequencies) and 4G frequencies was conducted by SECOM. As a result of the call for bids local mobile telecommunications licensees have started to provide 4G services within the country and to improve their infrastructure.

17. Broadcasting

17.1 Control Authority

On October 10, 2009, the Argentine Congress approved Audiovisual Communication Services Law No. 26,522 (the “ACS Law”) which, in turn, repealed former Law No. 22,285 (the “Broadcasting Law”), which had governed the operation of broadcasting companies in Argentina since September 1980. Decree No. 1225/2010 of August 31, 2010, regulated the ACS Law.

On January 4, 2016, a Necessity and Urgency Decree No. 267/2015 (“Decree 267”) was published which basically: (i) partially amended Law No. 27,078 (the “ICT Law”) and the ACS Law; (ii) created a new Control Authority called the Enacom (“*Ente Nacional de Comunicaciones*”) to replace the former authorities (AFTIC and AFSCA), an autarchic and decentralized entity under the jurisdiction of the Argentine Communications Ministry, that is in charge of the telecommunications and audiovisual communications industry; and (iii) created a special committee for the purpose of drafting a unified and updated new law that will replace the ICT Law and the ACS Law.

The ACS Law maintains the classification of audiovisual communications services as an activity of public interest and includes, among others, regulations for the advertising agencies, content producers and channels.

17.2 Key Issues

17.2.1 Licenses

Generally, the requirements established under the former Broadcasting Law for individuals as licensees or shareholders of a licensee have been maintained (except for the requirement of suitability and expertise in the industry).

Non-satellite licenses for use of the radio spectrum will be awarded through open and permanent bidding process. Those licenses whose primary service area is greater than 50 km and in places with more than 500,000 inhabitants will be awarded by the National Executive. The remainder of the open and subscription-based services that use non-satellite radio links that are planned will be awarded by the Enacom by bidding process.

17.2.2 Incompatibilities

The licensee company and its shareholders cannot hold 10% or more of the shares with voting rights in a legal entity or corporation, or its shareholders, which is a public service provider under any national, provincial or municipal license, concession or permit. The restrictions regarding public service providers do not apply to non-profit entities.

17.2.3 Capital of the Licensees

Licensed companies may not issue shares, bonds or any other negotiable instruments without authorization by the AFSCA when such actions involve more than 30% of the equity of the company. Shares with voting rights of companies providing over-the-air audiovisual communications services and or by subscription may be placed in the stock market up to a maximum of 45% of the aggregate amount of such shares.

17.2.4 Limitations to Multiple Licensing

The ACS Law includes certain limitations on multiple licensing:

- (i) At a national level:
 - Up to 1 license for satellite broadcasting license. Holding this kind of license excludes the chance to apply for any other audiovisual communications or ICT services license.
 - Up to 15 licenses for radio or free-to-air television services.
- (ii) At a local level:
 - Up to 1 license for AM radio.
 - Up to 1 license for FM radio, or 2 licenses for FM radio if there are more than 8 licenses in the same primary services area exist.
 - Up to 1 license for free-to-air television services.
 - In no case may a holder have more than 4 licenses in the same primary service area.

17.2.5 Term of Licenses

Licenses will be valid for ten years with a possible extension for another five years which may be automatically granted upon request before the Enacom. Subsequent renewals may be granted by the Enacom for periods of ten years. However, the National Communications Ministry may call for a bidding process for new licensees.

17.2.6 Restrictions for Foreign Investments

The ACS Law, in conformity with other previous laws that have addressed the topic (such as the Media Ownership Law No. 25,750 as explained in Section 17.3 below) places restrictions on licensee individuals and companies regarding their relationship with foreign companies, such as:

- (i) they may 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 (for this it must be proven that the source of funding of the entity is not directly or indirectly associated with these foreign companies);
- (ii) they may 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 points (i) and (ii) above 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. Also, the 30% of foreign participation cap may be increased by virtue of reciprocity conditions agreed 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 gives an Argentine investor to participate in broadcasting companies.

17.2.7 Cable Television Services

According to Decree 267, licenses for the exploitation of physical link and radio-electric link subscription cable television services are now called “Registrations” of a *Licencia Única Argentina Digital* and ruled by the ICT Law in accordance, principally, within the legal framework described under Section 16 “Telecommunications” above.

In accordance with Resolution Enacom No. 1394/2016, Registrations include the authorization of the coverage area in which the licensee is willing to provide the services. If the licensee wishes to extend its coverage area, an additional authorization by the Enacom will be needed.

17.2.8 Registries

Several Registries have been created to control the different actors of the communications sector 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.

17.2.9 Content Regulations

Private audio broadcasting services must broadcast a minimum 70% of domestically-produced content and a minimum 30% of music of domestic origin, for each half broadcast day, ensuring a 50% of independently produced music. Also a minimum 50% of self-produced content (directly produced by the licensees), including news programs or local newsreels, is required.

Open television network services must broadcast a minimum 60% of domestic productions. A minimum 30% content must be self-produced, including local news programs and an equal percentage of local independent productions in cities of more than 1,500,000 inhabitants. For localities of more than 600,000 inhabitants, the minimum is 15%, and for all other localities, 10%.

17.2.10 Advertisements

Advertisements must be domestically produced when broadcasted via open broadcasting services or on channels owned by subscription services licensees or when inserted in domestic channels. The regulations incorporated the possibility of including advertisement spots of foreign origin in the mentioned media as long as the advertiser or advertisement agent can provide evidence before the AFSCA that there are reciprocity conditions between Argentina and the country where the advertisement comes from.

The ACS Law also rules on other aspects of advertisement to be broadcasted through broadcasting licensees (e.g. time limits for broadcasting advertisements, special contents, obligation of registering the advertisement agency or the direct advertiser).

17.2.11 Taxes

The owners of audiovisual communications services must pay a tax proportional to the amount of the turnover corresponding to the commercialization of traditional and non-traditional advertisement, programs, channels, content, subscriptions and any other concept deriving from the exploitation of such audiovisual communications services. This tax varies between 0.5% and 5%, according to the service in question and the number of inhabitants of the service area.

Channels must also pay such tax at a rate of 5%.

17.3 Transfer of License or Change of Control

According to Section 41 of the ACS Law, as amended by Section 16 of Decree 267, (i) audiovisual communications licenses; and, (ii) shares in an audiovisual communications service company (the “Media Transaction”) are transferable provided that the purchaser provides evidence to Enacom of the fulfilment of all the regulatory requirements to become 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 permitted to close a Media Transaction and execute the transfer of the license or shares prior to obtaining Enacom’s approval, provided that the Media Transaction is subject to Enacom’s approval post-closing. The parties are required to submit the request for approval to Enacom within 30 days from closing of the Media Transaction. The Enacom approval may be granted explicitly or be deemed approved if the Enacom does not make any official observation within 90 days of the effective date of the transfer. The implementation of a Media Transaction without the corresponding explicit or deemed approval of the Enacom may result in revocation of the license by the Enacom.

17.4 Media Ownership Law

On June 18, 2003 the Argentine Congress enacted the Media Ownership Law, which in principle restricts the participation of foreign investors in “communications media companies” to 30% of the entity’s voting capital stock. The Media Ownership Law provides that “communications media companies” include, among others, newspapers, magazines, journals, production companies and audiovisual communications services companies under the Broadcasting Law (currently, the ACS Law).

The 30% of foreign participation cap 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 rights that the law of the country where the investor is based gives an Argentine investor to participate in broadcasting companies.

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