

# Doing Business in Argentina





e-mail: [marval@marval.com](mailto:marval@marval.com)  
website: [www.marval.com](http://www.marval.com)

**Buenos Aires**

Av. Leandro N. Alem 882  
(C1001AAQ) Buenos Aires, Argentina  
Tel. (54-11) 4310-0100  
Fax (54-11) 4310-0200

**New York**

120 East 56th Street, Suite 420  
New York, NY 10022, U.S.A.  
Tel. (1.212) 838.4641  
Fax (1.212) 751.3854

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# 1. Introduction

## 1.1 Background: Geography, Demography and Political System

### 1.1.1 Geography and Demography

The Argentine Republic is made up of 23 provinces and the Federal Capital, known as the Autonomous City of Buenos Aires. At the south-east tip of South America, Argentina is the eighth-largest country in the world and the second in Latin America, covering some 3.8 million square kilometers (1.5 million square miles). Argentina has an estimated population of 43 million people, of which 15 million live in Greater Buenos Aires. The overall population density is about 15 persons per square kilometer.

### 1.1.2 The Constitutional and Political System

Argentina is organized as a federal republic with a democratic political system, and its Constitution was adopted in 1853. As it stands, the Constitution divides the federal government into three branches: the executive headed by the president, the legislative and the judicial.

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

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

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

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

## 1.2 The Argentine Civil and Commercial Code

On October 1, 2014, the Argentine Congress enacted Law No. 26,994 to approve the Argentine Civil and Commercial Code, which has been in force since August 1, 2015.

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

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

- ii) Priority is given to general and community interest through the protection of collective incidence rights and public order rules within the framework of contracts and consumer rights, as well as via the restrictive interpretation of adhesion contracts.
- iii) General rules applicable to all private legal entities regulate the responsibility of individuals with management duties. Law No. 26,994 amended the Argentine Companies Law to eliminate the distinction between civil and commercial companies.
- iv) Contractual negotiations are regulated, as well as the responsibilities derived from them, preliminary contracts and letters of intent. This has established a distinction between private instruments – signed by the parties – and “particular” instruments that are not signed but that in certain circumstances may be used as evidence.
- v) The contracts that are regulated include agency, concession, franchise and supply contracts, factoring and association contracts (sharing agreements, collaboration groups, joint ventures and cooperation consortia), and several forms of bank contracts, assignment of a contractual position and arbitration.
- vi) With civil liability, the distinction between contractual and tort liability was eliminated, and stress is made not only on damage compensation but also on its prevention. For this purpose, judges are empowered to issue preventive measures and dissuasive penalties when rights of collective incidence are at stake.
- vii) Liability for property risk includes those who obtain a profit from the activity. Whether the activity generating the damages may have been recognized by the administrative authority is irrelevant.
- viii) Regarding *in rem* rights, the Argentine 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) The Argentine Civil and Commercial Code introduced changes to the statute of limitations regime, establishing as a general rule a shorter period (five years). It considers the forfeiture of rights on a separate basis.
- x) The Argentine 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 Argentine Civil and Commercial Code includes a broad scope of amendments, unlike the previous Argentine Civil and Commercial Code used for more than 140 years, and is based on the constitutional amendment of 1994. The reform responds, in some cases, to modern conceptions of the law, introducing changes of criteria particularly within the contractual field. On other issues, it includes approaches given by case law or 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 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 the choice of law and jurisdiction and the legal treatment of foreign investors, as well as monetary policy and foreign exchange. Argentina has entered into 60 bilateral treaties with different countries.

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

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

The Argentine Constitution states, as a general principle, that foreigners investing in economic activities in Argentina have the same status and the same rights that the law grants 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 these restrictions, at least for U.S. investors. Law No. 25,750, enacted in 2003, also eases the restriction by allowing up to 30% foreign ownership of Argentine broadcasting companies. A lack of precedent, however, has made its application uncertain.

Another restriction on foreigners is that they must obtain prior government approval to purchase land in border and security areas, or to hold a controlling stake in a company owning such land. This approval is usually obtained. This restriction is in line with Law No. 26,737, enacted in December 2011. It 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 land in Argentina may be owned or possessed by foreign individuals or legal entities. This percentage is also applicable at the provincial and municipal levels where the lands in question are located. Under no circumstance may foreign individuals or legal entities of the same nationality hold or possess more than 30% of the 15% total.

Amendments were made to Law No. 26,737 through Decree No. 820/2016, allowing ownership by the same foreign owner to exceed one thousand hectares (1,000 Ha). The modification also eliminated restrictions on owning land in "Industrial Zones," "Industrial Areas" or "Industrial Parks." That land is no longer taken into account when determining the hectares of rural land owned by a foreign person or entity.

### 1.3.2 Foreign Exchange Controls

With the reinstatement of foreign exchange controls in December 2001, all transfers of foreign currency to and from Argentina must be made, as a general rule, through an Argentine-licensed financial entity or foreign exchange business, collectively known, for this purpose, as the FX Market. Such transfers were subject to numerous restrictions and requirements in the applicable foreign exchange regulations.

However, as of December 2015, the Argentine government and the Argentine Central Bank issued several regulations which made the foreign exchange regime much more flexible. In fact, as of this date almost all of

the restrictions to the inflow and outflow of funds have been lifted (including but not limited to de facto restrictions).

In accordance with Communiqué “A” 6244 (as amended), with effect as from July 1, 2017, and with Decree 893/2017, dated November 1, 2017, all of the rules previously regulating foreign exchange transactions were removed (unless otherwise indicated), and replaced.

The following is a brief summary of the main rules and regulations of the foreign exchange regime in force as of the date hereof:

- The FX Market remains in place.
- All foreign exchange transactions must be conducted through an authorized financial entity.
- The obligation of Argentine residents to comply with the survey of foreign liabilities and debt issuances (Communiqué “A” 3602 and its supplement) and the survey of direct investments (Communiqué “A” 4237 and its supplement) remains in effect, as explained in detail below.
- The obligation to execute foreign exchange tickets (*boletos de cambio*) for each foreign exchange transactions was removed; provided that registration of all transactions by the intervening financial entity remains in effect.
- The obligation of Argentine residents to transfer to Argentina and settle the proceeds of their exports of goods, services and/or financial indebtedness in the FX Market was removed;
- The caps and limitations for the purchase of foreign currency (*atesoramiento*) were removed.

Through Communiqué “A” 3602, the Argentine Central Bank implemented an information regime for the registration of indebtedness and liabilities maintained by residents with non-residents at the end of each quarter. This declaration must be submitted through financial institutions if the debts are outstanding at the end of the quarter.

Through Communiqué “A” 4237, the Argentine Central Bank implemented a Direct Investment Survey System by which local companies with non-resident direct investors, and Argentine residents who have direct investments abroad, have to file a formal statement through financial entities.

Reporting is on a semi-annual basis, but the report is only mandatory if the value of the non-resident holdings in the country, when taking into account their participation in the value of the company’s net worth, reaches or exceeds the equivalent of USD 500,000. If holdings do not reach this threshold, reporting is optional.

### 1.3.3 Investment Protection and Promotion

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

These agencies insure investments against political risks such as the availability and the right to transfer foreign currency, expropriations or similar events, breach of contract by the government of the host country,

war and civil unrest, among other risks. Both agencies require prior approval on the legality of the investment and insurance coverage by the government of the host country.

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

#### 1.3.4 Membership of Regional Economic Trade Groups and International Organizations

Argentina's relationship with the rest of Latin America is based upon cooperation in trade and investment issues, most notably with the creation of the Mercosur Common Market (Mercosur), which is made up of 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 the rest of the world.

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

## 2. Argentine Investment Vehicles

Law No. 26,994 amended and unified the Argentine Civil and Commercial Codes, and also amended Argentine Companies Law No. 19,550 (*Ley de Sociedades Comerciales*), among other laws. The amended Argentine Companies Law applies to all types of companies, and so it has been renamed the General Companies Law (LGS).

### 2.1 Principal Types of Business Entities

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

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

The LGS recognizes single-shareholder corporations (*Sociedades Anónimas Unipersonales*, or SAU) as a corporate entity that can be adopted.

In addition, the LGS has introduced a new type of legal entity called the simplified corporation (*Sociedad por Acciones Simplificada*, or SAS).

The basic characteristics of the branch, corporation, single-shareholder corporation, simplified corporation and limited liability company, as per Argentine law and the regulations of the *Inspección General de Justicia* (IGJ) of the City of Buenos Aires, are provided below.

#### 2.1.1 Branch of a Foreign Entity

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

The branch must keep separate accounting records in Argentina and file annual financial statements with the IGJ. The branch must comply as well 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 corporate entities or individuals, are required to set up an SA. The minimum capital is ARS 100,000, - approximately USD 6,600 at the exchange rate at the time of writing this report. While the share capital must be fully subscribed at the time of incorporation, only 25% need be paid up on such shares, with the balance to be paid within two years thereafter. Contributions in kind of real estate, equipment or other non-monetary assets must be made in full at the time of subscription.

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

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

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

Shareholder resolutions must be recorded in an appropriate minute book.

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

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

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

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

*The Liability of Directors and Managers* - All directors and managers of an SA are subject to a standard of loyalty and diligence. Noncompliance with these standards results in unlimited joint and several liabilities for any damages that may arise.

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

*Incorporation Requirements* - As SAU are a type of SA, they have the same incorporation requirements of an SA, with these 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.



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

*Capital* – If the capital is increased, the capital contribution must be fully subscribed and paid up simultaneously once approved by the shareholders.

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

- (i) appoint a board of directors composed of at least three members;
- (ii) appoint a statutory supervisory committee of at least three members and always having an odd number of members; and
- (iii) comply with the filings required from companies subject to permanent government supervision by the Public Registry of Commerce (PRC) of the jurisdiction where the SAU has its domicile registered. This includes information on the holding of ordinary and extraordinary shareholder meetings, and financial statements.

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

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

*Incorporation* - Within 24 business hours from next day of the filing, as long as the filings are made electronically with a standard form. The incorporation or any amendments may be made by public deed, a duly legalized private instrument, or electronically with a digital signature. This procedure includes digital notices for IGJ observations.

SAS can obtain a tax ID within 24 hours of being filed to the AFIP, and with no need for providing evidence of domicile at the beginning of the filing.

*Board of Directors* – The simplified corporation must have at least one effective and alternate director when the statutory supervisors are disregarded. These posts may be appointed for certain or uncertain terms. With effective directors, at least one must have residency in Argentina. This new type of entity also allows meetings of the board of directors to be held electronically and outside the company’s premises.

*Shareholders* – One or more corporate entities or individuals as shareholders. The limited liability is subject to the integration of the shares. Shareholder meetings may be held electronically and outside the company’s premises.

*Corporate Purpose* – May be multiple and without any connection between the chosen activities.

*Limitations* – SAS cannot incorporate or participate in another SAS. SAS cannot be controlled by or connected in more than 30% of its corporate capital with a company in the terms of 299 ACL.

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

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

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

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

*Transformation* - All companies incorporated based on LGS may be transformed into SAS.

*Digital Records* – SAS companies must have digital minutes book as well as books for share registry, logs, inventory and the balance sheet, The company's by-laws, its amendments and power of attorneys may be granted through digital notarial protocol.

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

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

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

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

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

*Partners' Meetings* - SRL by-laws contain the rules for adopting resolutions. Unless the by-laws state otherwise, resolutions may be passed in writing without the need for holding a meeting. The exception is for those companies with a capital of ARS 10 million or more: they must hold meetings to review the annual financial statements. If one partner holds the majority vote, the vote of another partner will be necessary for the partners' meeting to be considered valid.

*Supervision* - The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs unless their capital amounts to ARS 10 million or more, in which case one or more statutory supervisors or a supervisory committee must be appointed. When statutory supervisors or a supervisory committee are appointed, the rules for SAs generally apply.

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

## 2.1.6 Mergers and Spin-offs

### 2.1.6.1 Mergers

The LGS regulates mergers. The law allows two types of mergers:

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

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

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

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

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

### 2.1.6.2 Spin-offs

Argentine law defines a spin-off as an 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 the rights similar to those applicable to mergers. Details of the spin-off must be published in the Official Gazette of the jurisdiction of the spinning-off company and in a newspaper with nationwide circulation.

*Right of Withdrawal* - Similar rules to those applicable to mergers apply.

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

## 2.2 Other Forms of Investment Entity

### 2.2.1 Partnerships

Partnerships are entities in which the participants' liability is unlimited. In Argentina, partnerships generally take the form of a *Sociedad Colectiva*. All of the partners are jointly and severally liable for the obligations of the partnership once its assets have been exhausted. No minimum capital is required and the liquidation of 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 Argentine 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 Argentine Civil and Commercial Code. A non-resident corporation may be a member of an Argentine UTE if it complies 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 the value-added and turnover taxes. For asset, income and other taxes, UTEs are considered transparent entities, and such taxes are payable by the members.

Joint ventures other than UTEs are also permitted under 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 brought into Argentine real estate financing. Since this law

was passed, a number of major projects have been started using the trust as part of the legal structure. This allows the intervening partners, whether developers, financiers or constructors, to isolate the property, the subject matter of the operation, from other assets and creditors. This guarantees that the project is not jeopardized by extraneous factors. Trusts also permit the securitization of the funds flowing from projects, opening up access to the capital markets for financing.

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

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

The Argentine Civil and Commercial Code allows the receiver to be a beneficiary of the trust, though in such a case the receiver must avoid any conflict of interest and must privilege the interest of the remaining parties of the trust agreement. The Argentine Civil and Commercial Code does not allow the receiver to be the residual beneficiary.

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

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

The law contains specific regulations regarding financial trusts. The receiver of a financial trust may only be a financial entity or a corporation specifically authorized by the Argentine Securities and Exchange Commission to act as financial receiver.

## 2.3 Certain Regulated Activities

### 2.3.1 Financial Institutions

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

The Central Bank also has power to establish the scope of permitted and prohibited activities, and to put limits on credit, indebtedness, minimum capital, reserves, net worth requirements and the concentration of risks. Many of the requirements of the 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, as well as credit associations, which are commonly known as *Cajas* and have limited functions and a smaller impact on the market.

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

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

Other financial institutions are limited to specifically authorized transactions.

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

### 2.3.2 Insurance Companies

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

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

- (i) corporations (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; and
- (iii) state-owned entities, whether national, provincial or municipal.

To obtain an insurance license from the SSN, 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;
- d) file information on the proposed management, organizational chart, main policies, guidelines for the attention of the insured, 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 on transactions with related companies, and links between the companies that are members of the group; and

- e) present a feasibility report and business plan.

The SSN will evaluate if the proposed initiative contributes to the development of a productive project, the development of the national economy, the creation of employment and the reinvestment of revenues. The SSN will also 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 the shares of previously authorized insurance companies are allowed, with the approval of the SSN.

The lines of insurance admitted by the SSN are life, personal accidents, health, retirement, burial, property and casualty, motor, liability, employer's liability, environmental damage, 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., shareholder meetings, by-law amendments); maintain the required level of reserves and capital; and report suspicious activities under anti-money laundering regulations, etc.

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

### 2.3.3 Reinsurance Companies

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

Reinsurance and retrocession, in all lines, may be placed with local reinsurers and admitted reinsurers, subject to the following ratios:

Contracts starting July 1, 2017: Up to a maximum of 50% of premiums ceded under the contract may be placed with admitted reinsurers.

Contracts starting July 1, 2018: Up to a maximum of 60% of premiums ceded under the contract may be placed with admitted reinsurers.

Contracts starting July 1, 2019: Up to a maximum of 75% of premium ceded under the contract may be placed with admitted reinsurers.

Local reinsurers are Argentine corporations (SA), cooperatives and mutual societies, as well as branches of foreign companies with capital in Argentina. To obtain a reinsurer license from 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).



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

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

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

- (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, shareholder 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 from January 27, 2013. It modifies the public offer regime of 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 completed its 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 and Exchange Commission (Comisión Nacional de Valores, or 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 regulations on the supervisory capacity of the CNV, summary investigations and administrative sanctions.

The securities market is divided, from a regulatory viewpoint, into a private and a public market. The division is based on the concept of "public offer." A public offer is an invitation, made by an issuer or individuals or companies engaged fully or partially in the purchase and sale of securities, to the general public or certain sectors or groups. The offer is made through personal notices, newspaper advertisements, radio or television broadcasts, films, billboards, signs, programs, circulars, printed notices, or any other means to enter into any transaction involving securities. The term "transaction" is defined by the Securities Law in the broadest sense, including the initial issue and placement of securities (primary offer) and the subsequent purchase and sale (secondary market), whether by traditional or electronic means. Only public offers of securities are subject to the Securities Law. Neither the Securities Law nor 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. 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.

To be engaged in a public offering of securities, the 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 the authorization to operate. The Securities Law states that only securities that have identical rights in each class may be publicly offered. CNV approval of a public offer means 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 Bolsas y Mercados Argentinos SA (BYMA), which started to operate in May 2017 as a replacement for the Mercado de Valores de Buenos Aires SA (MERVAL), is the most important. BYMA was created from the split of the MERVAL and the capital contribution of Bolsa de Comercio de Buenos Aires. The creation of this new entity, in the framework of the Securities Law, intends to unify the Argentine stock market to improve its efficiency.

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

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

The Securities Law 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.

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

The Securities Law created several types of licenses for the public offering of securities. Under the previous 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: the broker-dealer license, the underwriter license, and the clearing member license.

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

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

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

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

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

For financial trust regulations, the CNV issued the General Resolution No. 658 on April 14, 2016, which made 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 states that the initial identification of the trustee in the global program does not allow the possibility of its replacement. This provision was reaffirmed by the CNV's General Resolution No. 671 on July 21, 2016, through which the regulations of financial trusts were brought in line with the provisions of the Argentine Civil and Commercial Code .

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

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

General Resolution No. 696 also updated the definition of an SME, in terms of access to capital markets, as a company duly organized and existing under the laws of Argentina whose total annual income in pesos does not exceed the following values: (i) agribusiness sector: ARS 230.000.000; (ii) industrial and mining sector: ARS 760.000.000; (iii) commerce sector: ARS 900.000.000; (iv) services sector: ARS 250.000.000; and (v) construction sector: ARS 360.000.000.

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

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

The Support for Entrepreneurial Activity Law also implements the well-known system called crowdfunding, which had not been regulated before in Argentina. The goal is to promote financing for entrepreneurs and entrepreneurial capital institutions through the capital markets. The system allows entrepreneurs to file a

crowdfunding project over an online crowdfunding platform to obtain funds from investors to finance the project, provided that the legal requirements are fulfilled. The crowdfunding platform must be a company (*sociedad anónima*) duly authorized by the CNV. This regulation excludes from the crowdfunding system projects with charity purposes, donations, direct sales of goods and services, and loans that cannot be converted into corporate shares, or simplified corporate shares. The CNV has opened a public consultation process on the draft regulation of the crowdfunding system.

#### 2.4.1 Insider Trading

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

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

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

The Argentine Criminal Code was amended by Law No. 26,733 on December 28, 2011 to incorporate criminal sanctions for insider trading. The amendments include criminal penalties on directors, members of supervisory bodies, shareholders, shareholder representatives and whoever that, by means of their job, profession or position at an issuing company, provides or uses privileged information to which it had access as a result of its activities for the negotiation, pricing, purchase, sale or liquidation of securities. Penalties are increased, for example, when the privileged information is used or provided on a regular basis.

These activities are subject to the following sanctions that may be imposed by the CNV: (a) a written warning, which may be accompanied by the publication of the relevant resolution in the Official Gazette and two national newspapers; (b) fines of up to ARS 20 million, which may be increased up to five times the benefit obtained by the insider if it were higher; (c) disqualification for up to five years to act as directors, administrators, members of the supervisory board, accountants or external auditors, or managers of any entity subject to the supervision of the CNV; (d) cancellation of up to two years of the authorization to make a public offering; and (e) prohibition to make a public offering of securities or to 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 the incorporation through any other fraudulent means of assets proceeding from a criminal act into the market, provided that the possible consequence is to grant the assets the appearance of having been obtained by legitimate means, and given that the value of such assets is more than ARS 300,000. If the value of the

laundered assets is less than ARS 300,000, the person responsible is subject to a lower criminal sanction. The treatment of these criminal offences is handled on a risk-based analysis that may include the confiscation and return of assets.

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

### 2.5.1 Applicable Rules

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

Local enforcement has two stages: the actions of the security forces and criminal proceedings, and a previous confidential, preventive and repressive stage. The authority in charge of controlling and sanctioning in the first instance is the Financial Information Unit (the Unit or UIF, under its acronym in Spanish), which was created by Law No. 25,246 and its modifications. This special agency is responsible for issuing regulations for implementing the law and monitoring compliance, with special emphasis on preventing money laundering related to corruption, tax evasion, terrorism, extortive kidnapping, drug trafficking, weapon smuggling, child prostitution and pornography, corruption, and racially or politically motivated crimes. Decree No. 360/2016 created a National Program to combat money laundering and terrorism financing. It establishes that this organization has the competence to create and lead operatives in the national, provincial and municipal sphere. The Unit is managed by a board with 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 with the Egmont Group, an international agency comprised of several entities of this nature to prevent and fight money-laundering crimes. In 2012-2013, Argentina assumed the presidency of the group of experts for the control of money laundering (LAVEX) that operates under the scope of the Inter-American Drug Abuse Control Commission of 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 customer data in the manner and for the periods determined by implementing regulations issued by the Unit;
- (iii) Report to the Unit any suspicious transaction, or any transaction that, based on the experience of the reporting company and 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 suspicious transactions or any pending proceedings.

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

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

Know Your Customer procedures must lead to the categorization of clients. On the basis on this categorization, due diligence procedures must be run.

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

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



## 3. Tax Considerations

### 3.1 Income Tax

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

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

Non-residents and legal entities without a permanent establishment in Argentina are taxed only on income from Argentine sources. Based on the ITL, income will be considered as sourced in Argentina when it is made from assets located, placed or used in Argentina, or from the performance of any act or activity in Argentina that produces an economic benefit, or from events occurring in Argentina.

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

Income tax is payable on the net income made in a given fiscal year. As a general rule, income is allocated to the fiscal year in which it accrues. There are exceptions to this rule. For example, the interest income on government-issued bonds and securities is allocated to the fiscal year in which the interest comes due.

#### 3.1.1 Income Tax Rates

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

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

Resident individuals are taxed on a sliding scale from 5% to 35%, depending on their net income during the fiscal year. Income from the sale, exchange or any other disposition of bonds, stocks, units and other non-listed securities is subject to a 15% rate.

The distribution of dividends or profits (in cash or kind) by SAs, SRLs and branches of foreign entities can be made on a tax-free basis, except when the distributions derive from profits 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 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 on in such transactions do not reflect normal market practices, i.e., they are not at arm's length.

According to the provisions of transfer pricing, any transaction 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. To establish that the terms of the transaction are on equal footing (arm's-length compliance), businesses in Argentina must submit special reports with detailed information including data and supporting documentation.

Decree No. 589/2013 amended the regulatory decree of the ITL. With the amendment, which pertains to all purposes of the ITL and its regulations, low-tax jurisdictions are considered 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. This means that 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 that is made by a non-resident individual or a foreign legal entity without a permanent establishment in Argentina is subject to a withholding tax.

To determine the effective withholding rate, a 35% rate is applied to a presumed net income provided by the ITL that varies depending on the type of income. For certain types of income, the ITL allows the non-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 that 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 bonds, securities, stocks or units 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. This means that a 13.5% effective withholding rate applies. Non-resident individuals or foreign legal entities may opt to pay 15% on the difference between the gross amount of the transaction minus the costs incurred in the country to obtain and maintain the income, and other deductions allowed by the ITL. When the bonds, securities, stocks or units are transferred to a non-resident individual or foreign legal entity, the buyer must pay the tax.

### 3.3 Tax Exemptions for Foreign Entities

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

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

### 3.4 Tax on Presumed Minimum Income

The tax on presumed minimum income applies to all of the assets of Argentine companies and other entities, such as Argentine trusts (*fideicomisos*), common investment funds, and the permanent establishments of foreign entities and individuals in Argentina.

The tax only applies if the total value of the assets exceeds ARS 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 against this tax. Any tax payable under this heading is allowed as a credit against normal corporate income tax for the following 10 years.

According to Law No. 27,260, published in the Official Gazette on July 22, 2016, this tax will be done away with from the fiscal year starting January 1, 2019.

### 3.5 Value-Added Tax (VAT)

Value-added tax (VAT) applies to the sale of goods, the provision of services and the import of goods in Argentina.

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

VAT is paid at each stage of the production or distribution of goods or services based on the value added during each of the stages. This means that the tax does not have a cumulative effect.

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

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

### 3.6 Personal Assets Tax

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

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

| Tax period                  | Value of the assets            | Tax treatment   |
|-----------------------------|--------------------------------|---|
| 2017                        | Less or equal to ARS 950,000   | Non-taxable   |
|                             | Higher than ARS 950,000        | Subject to tax at a 0.50% rate in excess of ARS 950,000       |
| 2018 and subsequent periods | Less or equal to ARS 1,050,000 | Non-taxable   |
|                             | Higher than ARS 1,050,000      | Subject to tax at a 0.25% rate on the excess of ARS 1,050,000 |

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

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

### 3.7 Tax on Credits and Debits in Bank Accounts

This tax is levied on debits and credits in bank accounts and on other transactions that, 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 payment systems as a substitute for bank accounts. Tax law and regulations allow for several exemptions to this tax.

The general rate of the tax is 0.6% on each credit and debit. 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 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 on the OECD model and seek to avoid double taxation, other than the treaties with South American countries. In 2015, Argentina signed a tax treaty with Mexico. Mexico's notification of formal approval before entering into force is pending. To date, there is no tax treaty in effect 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 out within the respective local jurisdictions. The provinces and the City of Buenos Aires have entered into an agreement to prevent double taxation on activities done 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, stating: "All authors or inventors are the exclusive owners of their works, inventions or discoveries for the period of time established by law."

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

### 4.1 Trademarks and Trade Names

Trademarks and trade names are governed by Trademark Law No. 22,362 of December 26, 1980, together with its regulatory decree. The law determines that the ownership of a trademark and the right to its exclusive use are obtained by registration with the Trademark Office. The registration grants proprietary rights. For registering trademarks, Argentina adopted the International Classification of Goods and Services on April 9, 1981.

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

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

- (i) the applicant is the trademark holder; and
- (ii) there is a *prima facie* infringement or an imminent infringement.

In addition, adequate security or assurance must be given to cover possible damages that may be caused 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 the TRIPS Agreement (Law No. 24,425), but not the Patent Cooperation Treaty (PCT).

The Patent Law allows patents to be granted for any invention that complies with the requirements of novelty, inventive step and industrial application. Disclosure of an invention by the inventors or their lawful successors by any means of communication or exhibition in a fair within 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 from the filing date.

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

The reversal of the burden of proof is available for process patents without distinction as to the field of technology. 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 in Argentina.

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

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

On May 2, 2012, the Argentine Patent Office along with the ministries of industry and health issued Joint Regulation Nos. 118/2012, 546/2012 and 107/2012 with new guidelines for examining chemical-pharmaceutical patent applications. This Regulation was published in the Official Gazette on May 8, 2012 and became effective on May 9, 2012.

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

- 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 thus 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.
- c) Compounds represented by Markush structures will be accepted if the specification includes examples 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 and will not be recognized for the selection of one or more elements that were already generically disclosed in the art (such as in a Markush claim), even if these elements show different or improved properties.
- e) Salts, esters and other derivatives of known substances, such as amides and complexes, are considered the same substance and are not patentable.
- f) Active metabolites are derivatives from the active ingredients produced in the body, and they 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 the patent prosecution process 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 make up the general instructions for patent examiners. Experience with the general guidelines for patent examination has shown, however, that in practice such guidelines operate as very specific legal provisions that must be adhered to.

At first glance, 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 to amend 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 the patentability of biotechnological inventions to the Patentability Guidelines.

The main amendments are as follows:

- 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, plants and animals are non-patentable subject matter irrespective 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 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," which requires 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, and 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 the European Patent Office (EPO) on June 20, 2012, although it is more restrictive with regard to computer programs, which, according to Section 6 of the Argentine Patent Law, are not acceptable.

Regulation No. 318 summarizes the current official stance on 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 as well when the computer program is done 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 that provide a technical solution to a specific problem in a technical field may be considered patentable.

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

#### 4.2.5 Accelerate Examination

The Argentine Patent and Trademark Office (ARPTO) issued Regulation No. P-56/2016, which became effective on October 15, 2016. It allows applicants to accelerate the prosecution of pending patent

applications.

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

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

- a. the scope of the claims of the Argentine application is the same or narrower than that of the foreign patent;
- b. there are no domestic anticipations;
- c. when no foreign priority has been claimed, the disclosure of the invention has taken place abroad after the filing date in Argentina;
- d. third-party oppositions, if any, have been studied; and
- e. the foreign office that granted the equivalent patent shares the same patentability standards.

Applicants can voluntarily request the application of this regulation, and the Patent Office will issue a decision within 60 days after the request is filed.

Alternatively, the Patent Office can issue an “office action” requesting the applicant conform the scope of the claims to that of a granted equivalent. The term to comply with this request is 90 days.

#### 4.2.6 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 of the:

- 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 holder of the title may require alleged infringers to post a bond or give adequate guarantees to cover possible damages in the event that the court finally decides there is an infringement. Alternatively, the alleged infringer may elect not to post the requested bond and interrupt the objected use, and in turn require that the bond or guarantee be posted by the plaintiff.

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#### 4.2.7 Other Remedies

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

#### 4.2.8 Utility Models

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

### 4.3 Industrial Designs and Models

Registrations are granted for industrial designs or models to protect the appearance or shape of an industrial product that gives it an ornamental character. Applications may be filed in the name of an individual or a company. A foreign individual or legal entity must establish a legal domicile in the City of Buenos Aires.

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

In the absence of prior publication or use in Argentina or abroad, a valid registration may be obtained for a term of five years, renewable for two further terms of five years each. Applications for renewals must be made six to nine months before the expiration 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 the internet country code top-level domain (ccTLD.ar). However, the Argentine government has passed administrative resolutions to regulate the domain name registration procedure.

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

### 4.5 Copyright

Protection of copyright in Argentina is based on the constitutional principle set out in Section 17 of the Argentine Constitution. But copyright matters are specifically governed by Law No. 11,723 of September 26, 1933, as amended (the Intellectual Property 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 70 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 the country recognizing the copyright.

#### 4.5.1 Computer Software

Argentine Law No. 25,036, which came into effect on November 19, 1998, amended Section 1 of the IP Law. It now reads: *“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 determines that computer software components and documents may be registered with the relevant authorities to enjoy protection rights.

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

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Trademark licensing and technology transfer agreements executed by a 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 any other technical knowledge necessary for the manufacturing of products or the rendering of services.

According to Resolution No. 117/2014, license agreements 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.

Previous administrative approval of any technology transfer agreements between local entities and their foreign controlling 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 that regulate the protection of Geographical Indications (GIs) in Argentina. The first is Law No. 25,163, published on October 12, 1999, and regulatory Decree No. 57/2004, which deal with wines and wine-based alcoholic beverages (spirits). The second is Law No. 25,380 - modified by Law No. 25,966, published on December 21, 2004 - and regulatory Decree No. 556/2009, which cover agricultural and food products excluding wines and spirits. No other products outside the scope of this protection are eligible.

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

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 Argentine Civil and Commercial Code. The rules of interpretation of their terms, written or not, have been established through case law.

The Argentine Civil and Commercial Code regulates distribution agreements, not specifically but by applying the rules of the concession contract, as far as they are applicable. Section 1502 and subsequent sections of the Argentine Civil and Commercial Code, in particular Section 1511 Argentine Civil and Commercial Code, deal with this.

In general terms, the legislation establishes that:

- a) Unless the contracting parties agree otherwise, the assigned territory is exclusive and includes all of the goods and products sold by the grantor of the distribution agreement.
- b) In terms of the obligations of the grantor, in addition to what may be agreed on between the parties, the law provides that: (i) they can agree on a sales target, (ii) the grantor must provide the distributor with the necessary goods to sell them in the assigned territory, (iii) the grantor must respect the territory – but the grantor can reserve the right for direct or special sales, (iv) the grantor must give the distributor information and technical support, and (v) the grantor must admit the use of trademarks and other commercial elements that may help the distributor to advertise in its territory.
- c) The most important obligations of the distributor, in addition to what might be specifically agreed on between the parties, are: (i) to exclusively buy from the co-contracting party, (ii) to respect the geographic limits, (iii) to provide pre-delivery services, (iv) to have a suitable location or locations, and (v) to provide the proper maintenance and training of the staff.
- d) The term of the contract must be for no less than four years. If a shorter or undetermined period is agreed on between the parties, the duration is deemed to be four years. The law only allows parties to agree on a two-year term if the grantor of the distribution confers the distributor the use of major facilities.
- e) Retribution may consist of a margin of the resale of the products, goods or a commission.

For the termination of the contract, the law is designed to protect and benefit the rights of distributors, as seen in Sections 1492 and 1493 of the Argentine Civil and Commercial Code. Both sections regulate the contract and determine that to end a contract without cause it is necessary to give the distributor one month's notice per year of the contract, without any limitation.

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

The parties, however, can agree on other reasons for termination beyond those provided by Section 1494 (death or incapacity, dissolution, insolvency, unmet deadlines or repeated breaches serious enough to

question the distributor's ability to accomplish their obligations). The law also provides for a shorter term of two months if the distributor's sales volume decreases for two consecutive years.

## 5.2 Agency Agreements

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

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

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

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

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



## 6. Consumer Protection and Antitrust Legislation

### 6.1 Principal Sources of Law and Regulation

Consumer protection has been a constitutional right since 1994. It is governed by the general regulations for damages in Argentina, which come out of the recently enacted Argentine Civil and Commercial Code and Consumer Protection Law, No. 24,240 (CPL), as amended. Consumers also are protected by the fair-trade laws for labeling and advertising products, while antitrust laws protect consumers from the abuses of market manipulation and anti-competitive behavior.

### 6.2 General Regulations

The most significant reform in consumer protection and antitrust legislation is the elimination of the distinction between contractual and tort liability in the general regulations of the Argentine 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. That is because there is an obligation to not harm another person and to indemnify them when harm is done.

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

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

To establish civil liability, there must be a causation link between the act or omission and the damage. The test to establish causation is the “adequate cause” test. This means that an act or omission resulting in damages will be attributed to a person if such act or omission regularly or commonly leads to such a result. An abstract or objective foreseeability test is 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.

Under the Argentine Civil and Commercial Code, emphasis is made not only on damage compensation but also prevention. For this purpose, judges are empowered to issue preventive measures when consumer rights are at stake.

## 6.3 Consumer Protection Law

The Consumer Protection Law (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 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 is also considered 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 the 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 consumers through the appropriate channels. There is no express legal obligation for the voluntary conduct of a product repair or recall by supplier. However, if the product is considered to be risky or dangerous, a recall could be considered necessary as part of the general duty to prevent damages and the duty of suppliers to sell safe products. This action is likely to be taken into consideration to mitigate sanctions and the imposition of liability, as it could be considered a measure to reduce risks or damages.

### 6.3.3 Liability Regime

The CPL establishes the strict, joint and several liability of the producer, manufacturer, distributor, supplier, retailer and anyone using a 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 the damages caused to the product as a consequence of or on the occasion of the service.

Consumers have the right to take individual actions if their CPL rights are affected or threatened.

### 6.3.4 Class Actions

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

The Supreme Court initially provided class-action admissibility rules and proceeding guidelines in *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 compared with those rights that protect collective rights and are individual by nature.

The Supreme Court classified rights in three categories:

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

It also established the following requirements to admit the actions for claiming the rights 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 the claims of each particular person.
- Each individual interest, individually considered, must not justify the filing of a lawsuit that could compromise access to justice.

Notwithstanding the above, the ruling expressly states that a 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 or health, or if it is affecting groups that have been traditionally ignored or under protected.

The Supreme Court also explained that the formal admission of any class action requires the verification of certain elemental requirements that are of the essence and affect its feasibility. The requirements are:

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

In October 2014, the Supreme Court issued Agreement No. 32/2014 to create the Public Registry for Collective Actions (Registry) and set out the procedural rules for the Certification Order in collective actions.

The Registry is public and free of charge and access. 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. The Regulation establishes a common framework for collective action procedures, except for environmental procedures, until the Argentine Congress passes a law regulating this type of proceeding.

### 6.3.5 Punitive Damages

Claims initiated by consumers and consumer associations may include punitive damages fixed by a judge for a maximum of ARS 5 million (approx. USD 290,000). Trials are, in principle, cost-free for consumers and consumer associations.

## 6.4 Users and Consumers' Jurisdiction

Law No. 26,993 created three 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 judicial body exclusive to 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 National Court of Consumer Relations have yet to be created.

These entities will resolve consumer claims under approximately USD 31,000. The cap does 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 legislation also allows 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 (for instance, no confessional hearing, no rules concerning evidence provided by expert witnesses); (v) no preliminary defenses; and (vi) pro-consumer approach (*in dubio pro consumer*).

The law allows the immediate application of the new procedural rules to 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 the control of natural and legal monopolies, were included as a constitutional right. In September 1999, the Argentine Congress modified the former antitrust law via 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 via Law No. 26,993 (the Amendment Law).

Over the last 18 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 Antitrust Law, which created an Antitrust Tribunal within the scope of the Ministry of Economy as the ultimate antitrust regulator in Argentina. But the Antitrust Tribunal was never created.

The Supreme Court ultimately decided in two cases<sup>1</sup>. The two-tier regulatory system has continued as set out by the previous Antitrust Law. It is composed of the Antitrust Commission, which was designed to do technical reviews on mergers and investigations, and to issue recommendations to the Secretary of Trade, which would be the ultimate ruling body. This two-tier regulatory system, however, sparked a series of challenges in regard to which of the two authorities had the powers of the Antitrust Tribunal as stipulated by the Antitrust Law. The Amendment Law eliminated the notion of the Antitrust Tribunal and created an

<sup>1</sup> Rulings issued by the Argentine Supreme Court *in re Credit Suisse First Boston Private Equity Argentina II y otros s/ apel resol 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 on June 5, 2007.

Enforcement Authority appointed by the Executive Power. On May 27, 2016, the Executive Power appointed the Secretary of Trade as the Enforcement Authority. All references to the Antitrust Commission refer to the two-tier regulatory system 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, in both cases, may cause harm to the general interest of the Argentine economy.

The Antitrust Law applies to all individuals and entities doing business in Argentina, and those who do business abroad to the extent that their acts, activities or agreements may have impacts 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 to be restrictive practices, as long as the other requirements in Section 1 of the Antitrust Law are also met.

#### 6.5.4 Dominant Position

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

#### 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 to fix prices or production quotas or distribute market shares with the sole purpose of restricting competition. The Antitrust Commission has started to apply the conscious parallelism theory in some of its decisions.

#### 6.5.6 Economic Concentrations (Mergers and Acquisitions) - Administrative Control

The Antitrust Law requires certain transactions resulting in economic concentrations (*concentraciones económicas*) to obtain 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:

- (i) mergers;
- (ii) transfer of businesses;

- (iii) acquisitions of any shares or any other rights that grant to the acquirer control of or a substantial influence over the issuer; and
- (iv) any other agreement or act through which the assets of a company are transferred to a person or economic group or which gives decision-making control over the ordinary or extraordinary decisions of management of a company.

The requirement for approval of the Commission applies when the relevant group of companies involved has a volume of business<sup>2</sup> in Argentina of over ARS 200 million.

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

If 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 ARS 1 million for each day they fail to comply.

On 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. Even so, the Antitrust Commission is currently enforcing a “stop-the-clock” interpretation. This means that it considers that the first request for information stops the term of 45 business days, which will not start to run again until the necessary information for the issuance of the final resolution has been obtained. Currently, the average time that it takes the Antitrust Commission to issue a resolution is 24 months.

#### 6.5.7 Transactions Exempted from the Notification

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

- (i) the acquisition of companies in which the purchaser already holds more than 50% of the shares;<sup>3</sup>
- (ii) the acquisition of bonds, debentures, non-voting shares or debt securities;
- (iii) the acquisition of wound-up and liquidated companies that had no activities in Argentina during the preceding calendar year;
- (iv) gratuitous transfers of goods to the Argentine state, provinces, municipalities and the city of Buenos Aires;
- (v) the transfer of goods among mandatory heirs, by acts among living persons or due to death;
- (vi) the acquisition of only one company by only one foreign company that has no assets or shares of other companies in Argentina; and

<sup>2</sup> Volume of Business means annual sales net of sales discounts, value-added tax and other taxes related to the volume of business.

<sup>3</sup> The Antitrust Commission has interpreted this exemption through Advisory Opinion No. 824 (September 14, 2010), saying that those transactions in which the acquirer already held exclusive control over the target company are not notifiable, regardless of the specific shareholding.

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- (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 ARS 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 ARS 20 million in the last 12 months, or ARS 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 for 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 request a judicial order to liquidate or require the spin-off of companies infringing the provisions of the Antitrust Law. The directors, managers, administrators, internal auditors and members of the supervisory committee, attorneys-in-fact and legal representatives of such entities may be held jointly and severally liable with the infringing entity.

#### 6.5.10 Further Developments and Outlook

There is a bill in Congress designed to create a new Antitrust Law. Its main features are (i) the creation of a new authority, (ii) *per se* sanctions on hard-core cartels, (iii) the creation of a leniency process, (iv) a substantive increase of fines for anti-competitive conducts and gun jumping, (v) a suspension merger control procedure, and (vi) a significant increase of merger control thresholds.



## 7. Labor and Immigration Laws

### 7.1 Labor Laws

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

### 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 monthly minimum wage. For full-time workers, the minimum wage was ARS 8,860 as of July 2017. It will rise to ARS 9,500 in January 2018 and ARS 10,000 in July 2018. For daily workers, ARS 44.30 per hour was the minimum as of July 2017, increasing to ARS 47.50 in January 2018 and ARS 50.00 in July 2018. By law, employees are entitled to a 13<sup>th</sup> salary, known as *aguinaldo* in Spanish, which is paid in two installments each year, on June 30 and December 18. It is equivalent to 50% of the highest monthly wage earned in the previous six-month period. Typically, the standard work week is 40 to 48 hours, or an average of eight working hours per day. Workers earn overtime pay for work done in excess of the standard working week. Overtime payment rates are 50% more than the base rate on normal workdays, and double the base rate on Saturday afternoons, Sundays and official holidays. Directors and managers, however, are exempt from workday limitations, meaning they are not entitled to overtime pay.

### 7.3 Contributions and Withholdings

Based on Argentine law, employers and employees have certain obligations to make social security contributions for family allowances, medical services, and pension and unemployment benefits. On top of this, union contributions of 1% to 2.5% may be withheld from employees' salaries in accordance with many collective bargaining agreements. The mandatory social security withholdings and contributions are calculated as a percentage of the employee's remuneration. The employee's contribution is based on a calculation for which there is a cap that amounted to ARS 72,289.62 as of March 2017. The cap is updated every six months. The employer's social security contributions, on the other hand, have no cap in their calculation basis.

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

### 7.4 Vacations and Leaves of Absence

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

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

If employees cannot work due to non-work related accidents or illness, they are entitled to their full salaries for a period of three to 12 months, depending on the number of years they have worked for the company and if they have a dependent family.

## 7.5 Trial-Period Hiring

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

## 7.6 Termination of Labor Contracts

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

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

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

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

## 7.7 Work Risk Insurers (ART)

In 1995, Argentina established a system to reduce workplace risks and indemnify employees who get ill or injured at work. Based on 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 their workers with self-insurance. When an ART provides coverage, it must compensate the injured worker in accordance with the requirements of the LRT, and it must also provide medical and pharmaceutical attention, prosthesis and orthopedics, rehabilitation, occupational re-classification, and funeral service benefits. The ART is financed with monthly payments from the employers of insured persons.

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

## 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 residents: (i) permanent residents and (ii) temporary residents.

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 a change in immigration status. If the applicant prefers to apply for a permanent or temporary residence permit at the consulate, the request must be preceded by the issuance of an entry permit approved by the Argentine Immigration Board. The request for this permit may be filed with the Immigration Board through a third party on behalf of the applicant.

### 7.8.2 Permanent Residency

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

### 7.8.3 Temporary Residency

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

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

### 7.8.4 Mercosur Nationals

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

## 8. Environmental Laws

### 8.1 Introduction

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

Under the amended sections 41 and 43 of the Constitution, all Argentine residents have 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 in line with the applicable law.

According to the Constitution, the federal government established the minimum standards for environmental protection. The provinces can establish specific standards and implement regulations, but their standards cannot be lower than those at the federal level.

Below are the main federal laws for environmental protection.

### 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 sustainable development. This law sets the objectives of the national environmental policy and creates a federal environmental system to coordinate the environmental policies of the federal government, the provinces and the City of Buenos Aires.

The law, applicable nationwide, is used for the interpretation and application of specific legislation. This specific legislation will be in effect as long as it does not oppose the principles and provisions contained in Law No. 25,675.

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

Law No. 25,675 also requires that people or entities that perform activities of environmental risk must have insurance for environmental damages. This mandatory coverage was implemented through Decree No. 1,683/2012 and complementary regulations.

When environmental damages have a collective impact, any affected person, the ombudsman, non-governmental environmental organizations and federal, provincial and municipal agencies are entitled to ask a court that any damages be remedied. The law allows individuals to ask a court to stop any activities causing collective environmental damage.

### 8.3 Industrial Waste

The integrated management of industrial and service industry waste is addressed in Law No. 25,612, which took effect in July 2002. It establishes the minimum standards for the management of industrial and service industry waste. The law unifies the management of waste generated in industrial processes, without making any distinctions between hazardous industrial waste, (see paragraph 8.4. below) and waste not deemed hazardous.

Law No. 25,612 sets the minimum environmental protection requirements for the integrated management (generation, handling, storage, transport and treatment or final disposal) of industrial and service industry waste generated anywhere in Argentina.

### 8.4 Hazardous Waste

The hazardous waste law, No. 24,051, regulates the production, handling, transport, treatment and disposal of hazardous waste generated in areas within the jurisdiction of the federal government, or where the waste may affect more than one province. An example of the latter is if waste is transported from one province to another.

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

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

### 8.5 Air Pollution

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

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

### 8.6 Water Protection

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

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

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

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

### 8.7 Polychlorinated Biphenyls (PCBs)

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

For PCBs already existing in the country, the law requires the holders and those who market and manufacture PCBs must register with a national registry created for these purposes. They must update their information on the registry every two years.

Based on Law No. 25,670, those who do activities or provide services requiring the use of PCBs must contract an insurance policy to guarantee the remediation of possible environmental and health damages caused by such activities.

### 8.8 Native Woods Protection Law

In 2007, the Argentine Congress enacted Law No. 26,331 for the protection of native woods under federal jurisdiction. Most provinces have since enacted their own legislation with equal or higher standards than at the federal level. Buenos Aires Province has drafted a bill, but it has not been made law.

Based on Law No. 26,331, native woods are classified as red, yellow or green. Clearing native woods in the red and yellow categories is forbidden, but those in the green category can be developed sustainably if in compliance with soil change and movement standards that must be approved by each province. Certain native woods in the yellow category can be classified as green category.

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

### 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 periglacial environments to preserve them as water resources for human consumption and agriculture, and for protecting biodiversity. It also protects areas for scientific and tourism purposes.

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

Based on the law, activities are prohibited in glaciers and periglacial environments that may affect their natural condition or function as a water resource, or may cause destruction, transfer or interfere with its advance. It includes these 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.

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

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

## 8.10 Protecting the Environment from Forest Fires

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

The law creates the Federal System for the Handling of Fires for protecting the environment from fire damage and for implementing mechanisms so the state can effectively participate in preventing and fighting fires.

Law No. 26,815 also created another agency, the National Fire Management Service, which is charged with developing and implementing 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 of making a formal request.

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

## 8.12 Household Waste

Law No. 25,916 regulates the minimum environmental protection standards for the management of household waste from residential, urban, commercial, medical care, health, industrial and institutional



sources. Law No. 25,916 is designed to create a proper and rational system for the management of household waste.

### 8.13 Empty Containers of Phytosanitary Products

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

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

### 8.14 Environmental Tort Law Rules

The Argentine 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.

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

The owner and the keeper of a dangerous object or activity that harms the environment may be excused only in the 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. The person who commits a dangerous activity or benefits from it may be held liable for the damages caused to the environment as a consequence of that activity.

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

The Argentine 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 other officers who participate in the company's decision-making, depending on their level of participation. In the event of damages caused by several parties (e.g., several industries polluting the same river), joint liability may be assessed.

## 8.15 Criminal Liability

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

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

## 8.16 Local and Multi-Jurisdictional Authorities – Increasing Controls

In addition to the environmental provisions in provincial constitutions, the provinces and the City of Buenos Aires have enacted specific regulations (laws, decrees, resolutions, etc.) addressing a wide spectrum of environmental matters. These included permission for the management of hazardous substances, wastes, gaseous emissions and liquid effluents, and for handling certain equipment. 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 and gas, mining, power transmission, etc.).

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

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

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

## 8.17 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) to create a single market with a common external tariff. Full membership for Venezuela became effective on July 31, 2012. Mercosur has a population of approximately 295 million, living in an area of more than 15 million square kilometers.

The objectives of the Mercosur Treaty are:

- (i) the free transit of capital goods, services, people and capital between member states by eliminating customs duties and lifting non-tariff restrictions on the transit of goods, among other measures;
- (ii) the establishment of a common external tariff (*Tarifa Externa Común*, or TEC after its acronym in Spanish) and the adoption of a common trade policy in relation to non-member states; and
- (iii) the coordination of macroeconomic and sectoral policies between member states in relation to foreign trade, agriculture, industry, taxes, the monetary system, monetary exchange rates, capital investments, customs, services, transport and communications, as well as any other issues that may be agreed on to ensure free competition among member states.

Mercosur has achieved a free-trade zone with respect to most products. However, some products considered sensitive such as sugar, automobiles and capital assets have been excluded, meaning they are still subject to tariffs, which are being reduced each year. New products are included every year in the TEC.

##### 9.1.1.1 Additional Mercosur Agreements

Bolivia's protocol for becoming a member of Mercosur was signed by the Mercosur countries in 2015. Chile, Colombia, Ecuador, Guyana, Peru and Suriname are associate members of the trade bloc.

#### 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 (anti-dumping actions, safeguard measures and countervailing duties, among other things) are applicable to Argentina.

Argentine customs regulations require that most imported goods pay customs duties before entry.

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 has been in force since December 2015, replacing the Prior Import Sworn Statement (*Declaración Jurada Anticipada de Importación*,

or DJAI after its acronym in Spanish). Specific goods like food, chemicals and medicine may require additional authorizations by regulatory agencies to be imported.

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

The LNA applies to products including but not limited to textiles, footwear, toys, domestic appliances, motorbikes and auto parts.

In general, no import duty is payable for goods originating from a Mercosur member state.

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

Specific foreign exchange rules apply to the export of goods.

#### 9.1.2.1 Import Monitoring System - SIMI

On December 22, 2015, the Federal Tax Authority (AFIP) published Regulation 3823 (*Regulación 3823*) in the Official Gazette to establish the SIMI.

The SIMI created an obligation for importers to file the information in the SIMI with the AFIP before issuing the purchase order, production order or similar document with the foreign exporter. The information included in the SIMI is available to all agencies adhering to the SIMI, so those agencies can make objections to the imports. The importer will not be able to issue the purchase order or similar document unless the SIMI has been approved by all the agencies that are part of the SIMI. An approved SIMI is a prerequisite for applying for a non-automatic import license.

The importer must to file for approval from the SIMI for all final imports unless the goods are exempt. The exemptions are not economically relevant for most importers (e.g., samples, donations, imports by courier, etc.). Only final imports are subject to the SIMI.

The SIMI filing must be made through the MALVINA system (SIM after its acronym in Spanish) and is regulated by the AFIP. The government agencies willing to adhere to the SIMI have to enter into an agreement with the AFIP.

Agencies that adhere to the SIMI must issue their observations within 10 working days from the filing of the SIMI request. If no agency objects within that period, then the SIMI request will be considered approved so the import process can proceed. If there are objections, the importer must resolve them directly with the objecting agency.

Once approved, the importer can make the import within 180 calendar days from its filing. This term may be extended.

#### 9.1.2.2 Automatic and Non-Automatic Import Licenses – LAI and LNA

In December 2015, the Ministry of Production reinstated automatic and non-automatic import licenses (LAI and LNA, respectively, after their acronyms 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 a product. The LAI are processed together with the SIMI and do not require any additional filing.

Importers filing for an LNA must submit certain information from the importer (name and 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, depending on the product to be imported. This LNA is also filed online in the SIMI and analyzed by the Secretary of Trade.

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

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

### 9.1.3 GATT / WTO

Argentina has enacted Law No. 24,425, which was approved on December 7, 1994. The final minutes of this law (the Minutes) 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 anti-dumping, 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 market. The comparison between the export and comparable prices must be made at the same stage in the distribution process, normally at the post-factory level.

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

Argentina’s procedure for anti-dumping investigations 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) 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 over the definition of the investigated and related products and the representativeness of the domestic industry.

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

The safeguard procedure is regulated by Decree No. 1059/1996. Procedures for products from countries without a market economy are regulated by Decree No. 1859/2004.

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

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

## 9.2 International Treaties

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

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

## 10. Dispute Resolution

### 10.1 Argentine Judicial Organization

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

The Argentine Supreme Court of Justice is the highest level of the Argentine judicial system. In principle, the intervention of the Argentine Supreme Court of Justice is reserved to matters in which it has original jurisdiction pursuant to the Argentine Constitution, such as those involving foreign ambassadors, ministers and consuls, and disputes between provinces, or exceptional federal cases in which it exercises ordinary or special appellate jurisdiction.

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

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

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

### 10.2 Choice of Law and Jurisdiction

#### 10.2.1 Choice of Law

As a general rule, Argentine law allows 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 on the application of the principles of international commercial law, such as the UNIDROIT Principles for International Commercial Contracts.

The choice of foreign law will only be valid to the extent that it is was not agreed on to evade the application of the mandatory rules contained in the laws that would apply in the absence of a choice-of-law provision. To that extent, the Argentine Civil and Commercial Code 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 a place cannot be determined, contracts are governed by the laws of the place where they were executed.



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

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

### 10.2.2 Choice of Jurisdiction

Argentine law allows the parties to an international contract to choose a jurisdiction - a foreign court or an arbitration tribunal - other than Argentina for the settlement of any disputes arising under that relationship when the dispute relates to pecuniary rights.

In the absence of a forum-selection clause by the parties or the application of an international treaty, the plaintiff may choose to initiate its claim before (i) the courts of the domicile or residence of the defendant, 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 have exclusive jurisdiction to hear all insolvency proceedings relating to debtors domiciled in Argentina or whose principal place of business is Argentina, as well as disputes involving property located in Argentina and the registration of trademarks and patents. With respect to debtors domiciled abroad, local courts have jurisdiction only to the extent that the debtor has assets in Argentina, in which case insolvency proceedings will only cover such assets. Another case of jurisdiction is if the debtor's principal place of business is in Argentina.

The Argentine 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 limitations. It has also legislated on international *lis pendens*, international cooperation, and procedural assistance between foreign and local courts.

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

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

## 10.3 Alternative Dispute Resolution

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

### 10.3.1. Mediation

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

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

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

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

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

### 10.3.2. Arbitration

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

The Argentine Civil and Commercial Code Argentine Civil and Commercial Code (CCCN), in force since August 2015, introduced significant federal regulations on arbitration in a chapter that refers to the arbitration contract (sections 1649 to 1665). Before August 2015, arbitration in Argentina was only legislated by the local procedural codes of each province and by the Federal Code of Civil and Commercial Procedure.

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

In principle, all disputes over matters of economic content and capable of a private settlement may be resolved by means of arbitration. For example, the following matters of dispute are considered excluded from any arbitration agreement and may not be resolved through arbitration:

- a) The civil status or capacity of persons,
- b) Family affairs,
- c) Users and consumers,
- d) Standard form contracts,
- e) Labor law, and
- f) Those in which the Federal State or local states are parties.

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

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

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

For the judicial revision of the arbitration, the CCCN allows arbitral awards to be reviewed before state courts on the grounds of nullity. Additionally, it has introduced an ambiguous provision so the parties may not waive the right to challenge final awards that would be contrary to the legal system.

Although specific bills have recently been passed to regulate cross-border disputes, there is currently no specific legislation governing international arbitration in Argentina. The CCCN makes no distinction between domestic and international arbitrations.

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

The main arbitral institutions for cross-border disputes in Argentina are the International Chamber of Commerce (ICC) and the International Centre for Dispute Resolution of the American Arbitration Association. For local disputes, the institutions most frequently used are the Arbitral Tribunal of the Buenos Aires Stock Exchange (rules in effect as of April 16, 1993; only available in Spanish) and the *Centro Empresarial de Mediación y Arbitraje Asociación Civil* (rules in effect as of June 8, 2011; only available in Spanish).

## 10.4 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 a treaty will prevail. In the absence of such a treaty, the corresponding procedural code will apply. The National Code of Civil and Commercial Procedure (CPCC) will be applicable<sup>4</sup> if the defendant is domiciled in the City of Buenos Aires or if the matter at issue will be debated before a federal court. Provincial procedure rules will be applicable when the matter at issue is to be debated before a provincial court. Unless otherwise stated, this analysis of the recognition of foreign judgments concerns federal procedure rules (i.e., the CPCC), which are, in principle, applicable when a foreigner is involved.

### 10.4.1. Requirements

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

<sup>4</sup> Until the issues brought up by the new charter for the Autonomous City of Buenos Aires have been resolved.

- a) The judgment must have been issued by a court considered competent by the Argentine principles of conflict of laws as regards jurisdiction, and must have been final in the jurisdiction where it was rendered and resulted from a personal action or an *in rem* action concerning movable assets. If the judgment resulted from an *in rem* action, the disputed personal property must have been transferred to Argentina during or after the prosecution of the foreign action.
- b) 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 themselves against the foreign action.
- c) The judgment must have been valid in the jurisdiction where it was rendered, and its authenticity must be established in accordance with the requirements of Argentine law.
- d) The judgment must not violate any principles of the public policy of Argentine law.
- e) The judgment must not be in conflict with a prior or simultaneous judgment of an Argentine court.
- f) Reciprocity is not required for an Argentine court to recognize a foreign judgment.

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

#### 10.4.2 Procedures Relating to Enforcement

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

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

#### 10.4.3 Immunity

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

#### 10.4.4 Enforcement of Foreign Arbitral Awards

Foreign arbitral awards are recognized in Argentina and they are 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 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) for reservations over reciprocity and commercial disputes. Argentina has also acceded to the 1975 Inter-American Convention on International Commercial Arbitration and the 1988 Mercosur International Commercial Arbitration Agreement.

## 11. Security Interests

### 11.1 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 used as security interests.

### 11.2 Mortgages

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

#### 11.2.1 Mortgages over Real Estate

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

##### 11.2.1.1 Priorities

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

The holder of a first-degree mortgage over real property will be given priority over any and all other credits subsequently secured by a mortgage over the same property, bar a few exceptions. Priority is given based on the chronological order in which each mortgage is registered.

##### 11.2.1.2 Foreclosure

Foreclosure of a mortgage is done through a special summary proceeding that makes it possible for the property to be sold at public auction. Foreclosure may be conducted by out-of-court proceedings under

certain conditions. Foreclosure of a mortgage (or a pledge) is subject to special rules if the debtor is subject to a bankruptcy proceeding.

### 11.2.2 Mortgages over Ships

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

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

### 11.2.3 Mortgages over Aircraft

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

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

## 11.3 Pledges

### 11.3.1 General

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

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

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

### 11.3.2 Registered Pledges

Decree-Law No. 15,348/46, of May 28, 1946 (as ratified by Law No. 12,962, and further amended), has made it possible to create pledges for which the asset pledged may remain in the possession of the pledgor. This has created the "registered pledge," which includes the "fixed" and "floating" pledges. Fixed pledges affect only the relevant registered assets, while floating pledges affect the original pledged goods and the

goods derived from their transformation or replacement. The amount of the pledge is limited to the amount of the secured obligation, including, without limitation, interest and other ancillary amounts.

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

### 11.3.3 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 that case, it is mandatory to file the claim in the jurisdiction where the debtor is domiciled.

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

### 11.3.4 Pledges of Shares

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

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

The pledge grants the creditor a priority right over the proceeds of the sale of the shares. For shares or other securities traded on stock markets, those held as collateral may be sold through a stockbroker as soon as the pledgor has failed to comply with their obligations under the pledge. First, however, the sale must comply with the requirements of the Argentine Securities and Exchange Commission (*Comisión Nacional de Valores*). That is because that entity interprets the sale of shares through an out-of-court proceeding as a "public offering" of securities, and so it is subject to regulations of the Argentine Securities and Exchange Commission and the Buenos Aires Stock Exchange, which govern public offerings.

## 11.4 Security Assignments and Trusts

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

Alternatively, credits may be assigned as a security in favor of creditors. One of the main differences with a trust is that in a security assignment the assigned assets are typically limited to rights or credits including



receivables, without limitation. With trusts, however, there is no such limitation, and they may be used as vehicles for taking security over most forms of movable and real estate assets.

As a general rule, Argentine law requires that a debtor be given notice of assignment for the assignment to be effective vis-à-vis the debtor and third parties. Such notice must be given to the debtor by public instrument (*instrumento público*), typically through a notary public, or by a private instrument 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 Argentine Civil and Commercial Code, the rules on pledge of credits are applicable to the assignment of credits as security.

## 12. Insolvency and Bankruptcy

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

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

### 12.1 Out-of-Court Agreement

A debtor is in a situation of 'suspension of payments' when they are unable to service their debt obligations as they become due or are undergoing economic or financial difficulties. These debtors may reach an agreement with the majority of their unsecured creditors and submit it for court endorsement before the start 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 is binding among the parties even if a court endorsement is not obtained, unless otherwise expressly agreed.

Along with the petition for court endorsement, the debtor must submit the following before the relevant court: a statement of assets and liabilities appraised as of the date of the agreement duly sworn by a certified public accountant; a list of creditors; a list of judicial and administrative proceedings of 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.

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

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

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

## 12.2 Reorganization Proceedings

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

In addition, debtors adjudicated as bankrupt may (by filing a motion within 10 days of the publication of the adjudication of bankruptcy notices) request the conversion of the bankruptcy proceedings to reorganization as long as the bankruptcy was not adjudicated as a consequence of the breach of a reorganization plan, while a reorganization proceeding was pending, or 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 a description and date of the start of the suspension of payments along with evidence of this; a statement of assets and liabilities appraised as of the date of the petition duly sworn by a certified public accountant; the debtor's financial statements for the last three fiscal years; a list of creditors; a list of judicial and administrative proceedings of 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.

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

Once a reorganization process starts, the debtor stays in possession of its assets but their administration is subject to the supervision of the receiver. Nonetheless, the debtor must obtain court approval (with prior notice to the receiver and the creditors' committee) before engaging in most activities deemed to exceed the ordinary course of business, as well as certain material transactions (including transactions on registered property, creation of liens, disposition or lease of goodwill and issuance of secured debt). In addition, the debtor is forbidden from entering into transactions for no consideration or which would adversely affect the status of pre-petition claims.

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

All creditors (including, without limitation, secured creditors) must submit proof of their claims with the receiver, who reviews them and confirms the registration of the claim in the debtor's books and, if appropriate, those of the creditor. There is a nominal fee due in connection with such filings. Both the debtor

and any creditor may challenge the filings of proofs of claims made by other creditors. The receiver prepares and submits before the court a report on each individual claim filed, and based on this the court will issue a resolution on the allowance or rejection of the claims.

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

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

To be confirmed by the relevant court, the reorganization plan must be executed by unsecured creditors (excluding those who are also controlling shareholders) representing for each class an absolute majority of creditors on a headcount basis, and not less than two thirds of the aggregate principal amount of the unsecured claims outstanding. Consent of unsecured creditors holding debt securities issued in series (i.e., notes) must be granted at a securities holder 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 or second call, respectively). Securities holder meetings are subject to the following rules: (i) for determining a headcount majority, all votes of each series consenting to the plan will be computed as given by one person and all votes rejecting the plan will be computed as given by one person, and (ii) the aggregate principal amount of the securities held by the holders consenting the plan will be computed for determining the principal amount majority; provided that 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 cramdown power and 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 quarters (3/4) of the aggregate principal amount of the impaired unsecured credits; (ii) the plan does not discriminate against the opposing classes by banning the creditors of such classes from choosing among the available alternative reorganization options, if any; or 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 cramdown power, then it will declare the debtor bankrupt provided that, in certain cases, before declaring bankruptcy the court will commence the salvage proceedings as described below.

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

A plan duly confirmed may be declared null and void at the request of a creditor. The request must be filed within six months after the plan was confirmed and based exclusively on the willful exacerbation of the

liabilities, recognition or simulation of inexistent or unlawfully granted securities, concealment or exacerbation of the assets, known after the elapse of the statutory term for challenging the plan as described above.

### 12.3 Salvage Proceedings

Based on the Bankruptcy Law, under certain conditions the 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 a confirmation of its reorganization plan.

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

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

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

### 12.4 Bankruptcy

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

The filing of a petition for voluntary bankruptcy must include: a description and the date of the start of the suspension of payments along with evidence of this; a statement of assets and liabilities appraised as of the petition date duly sworn by a certified public accountant; the debtor's financial statements for the last three fiscal years; a list of creditors; a list of judicial and administrative proceedings of 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 suspension of payments. On the filing of an involuntary bankruptcy petition, the court will give five-days' notice to the debtor. The petition may be dismissed if during that period the debtor provides evidence to the court that it is not in suspension of payments (i.e., the deposit of the amounts owed to the plaintiff). After bankruptcy is adjudicated and within the 10 days after the publication of the bankruptcy adjudication notices, the debtor may file a motion requesting the conversion of the bankruptcy proceedings into reorganization, provided that the bankruptcy was not adjudicated as a consequence of the breach of a reorganization plan, or while reorganization proceedings were pending, or if one year has elapsed since a court declaration of performance of a prior reorganization.

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

The start of bankruptcy proceedings has, *inter alia*, the following effects: all proceedings on unsecured claims against the debtor are automatically stayed and the venue of all such proceedings is consolidated at the court that hears the bankruptcy proceedings. New proceedings on unsecured claims are also not allowed to be started; 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 on a request 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 if 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 natural person debtor will be subject to restrictions such as requiring the court's prior authorization to travel outside Argentina, and will be disqualified from doing business, acting as administrator, manager, trustee, liquidator or incorporator of companies, or acting as agent or attorney-in-fact with general powers for a term of one year from the bankruptcy adjudication date or the suspension of payments.

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

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

If no decision is made on the continuation of the debtor's activities, the receiver will move forward with the liquidation of the assets of the estate. Before beginning the liquidation process, the workers' cooperative may make a request to the court to purchase of the debtor's equity and compensate this 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 estate's property; (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 concluding the liquidation procedure, the receiver prepares a final report, including proposals for the distribution of the proceeds among the creditors, and notice is given to the creditors, who may file objections. After all of the distributions to creditors have been completed, the bankruptcy proceedings conclude and the debtor will be discharged.

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

Under exceptional circumstances, a debtor's bankruptcy adjudication may be extended to a debtor's shareholders with limited liability and other third parties. The bankruptcy adjudication may be extended to: (i) any person who caused the debtor to conduct activities for such person's sole benefit and managed the debtor's assets as if they were the property of such person in fraud of the debtor's creditors, provided that such person must (v) have had an active role in the debtor's bankruptcy; (w) have shown 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. The bankruptcy adjudication may also be extended to (ii) any controlling shareholder of the debtor who unlawfully diverts the debtor's corporate interest, and subjects the debtor to a common management with the purpose of pursuing such controlling or such controlling entity corporate group's benefit; and (iii) any person whose assets and liabilities are commingled with those of the debtor in such a way that makes it impossible to identify the owner or holder of them.

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

## 12.5 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 starting with the suspension of payments and ending on the date when the debtor files the request for reorganization or is adjudicated as bankrupt. The look-back period cannot extend more than two years from the date immediately preceding the date of filing of the request for reorganization or the date of the adjudication of bankruptcy.

The following transactions carried out by the debtor during the 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.



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Transactions not subject to the avoidance action are those made by the debtor in the ordinary course of business or those 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.



## 13. Public Law

### 13.1 Introduction

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

The federal government coexists with 24 local governments (23 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 by federal and local authorities.

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. In most cases, provincial administrative law has not been autonomously developed, so generally speaking the same administrative law jurisprudence and principles are followed at federal and local level.

### 13.2 Judicial Review of Administrative Decisions

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

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

In certain cases, private parties may obtain a court injunction to suspend the effects of administrative decisions. In cases in which the federal government or its entities are parties, the procedure should follow Law 26.854, which contains certain limitations in relation to this kind of remedy.

### 13.3 Procurement Regulations

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

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

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

The general principle is the need that procurement must be done by means of a competitive bidding process that ensures equality between all bidders.

The bidding terms and conditions usually impose certain economic and technical requirements (e.g., expertise in similar works, a minimum net worth, certain debt ratios, etc.) for the granting of public contracts. “Buy Argentine” requirements are also applicable at federal and local levels.

### 13.4 Public Works and Utility Concessions

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

Major contracts for the construction and operation of large nuclear and hydropower generation projects are currently being carried out.

The federal government has announced *Plan Belgrano*, a program of infrastructure projects to foster the development of the provinces of the north of the country. It includes railways, highways, roads and ports.

Another program, called *Plan Patagonia*, is for infrastructure projects to foster the development of the southern provinces, including by building airports, railways, roads, and conventional and renewable power generation projects.

### 13.5 Private Initiatives and Public-Private Partnerships

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

Some jurisdictions have passed regulations that allow private investors to propose public works or projects to the government to meet public needs. Should the proposals be declared of public interest, the private investor who initially filed the proposal gets 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 at federal level and in some provinces. Project financing and turnkey schemes are being contemplated as well.

In 2017, the Federal Public-Private Partnership (PPP) contracts regime was established via Law No. 27.328 and Decree No. 118/2017. The PPP allows for balanced and predictable cooperation between the private and the public sector.

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

PPPs are an alternative regime for public works and public concessions. They do not hinder the use of traditional systems. The public sector may consider the most suitable contracting method to meet public needs in each project.

The provinces and the City of Buenos Aires have been invited to adhere to the Federal PPP regime.

### 13.6 State Liability

There is a Federal Law regulating the tort liability of the state and public officers, including state liability for unlawful and lawful actions.

The Federal Law on State Liability provides direct and objective liability, which consists of the concept of *faute de service*, or misconduct, that is applicable to cases of liability due to unlawful action, and the notion of "special sacrifice" for liability due to lawful action.

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

The provinces and the City of Buenos Aires have been invited to adhere to the regulations on state liability so as to provide for uniform legislation on this matter across the country.

### 13.7 Public Ethics

Argentina has ratified the Inter-American Convention against Corruption, the United Nations Convention against Corruption, and the Convention against Bribery of Foreign Public Officers in International Transactions.

These international conventions, along with the public ethics regulations 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 crimes of bribery and corruption. However, the House of Deputies approved a bill for corporate criminal and administrative liability in bribery crimes. The bill is under discussion in the Senate.

Over the last year, several measures were taken to improve transparency in the public sector in a bid to rebuild social trust in public institutions. Decree No. 201/2017 established a new protocol applicable to proceedings of any nature between the federal government and individuals or legal entities related to the highest authorities of the executive branch of the federal government.

The executive branch also presented a bill to the House of Deputies to regulate the activity and publicity of advocacy or lobbying activities.

### 13.8 Access to Public Information

There is a Federal Law on Access to Public Information that is in line with traditional jurisprudence and international commitments and recommendations.

The purpose of this regulation is to guarantee the right to have access to public information and to promote citizen involvement and transparency in public affairs, based on principles of equal treatment, procedural celerity and maximum disclosure.

The law regulates who must provide access and the exceptions for providing the information. It also created the information request procedure and the Public Information Access Agency.

### 13.9 Bilateral Investment Treaties

The bilateral investment treaties signed by the federal government with most OECD countries grant direct rights to protect 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 provide international arbitration (under the ICSID or UNCITRAL rules) to obtain relief for acts or omissions adopted by the Argentina and any of its political subdivisions.

## 14. Mining

### 14.1 Introduction

Mining in Argentina is governed by the Mining Code, which was enacted by Law No. 1919 in 1886 and has been amended several times since.

As in most Latin American countries, Argentine law is based on the principle that all mineral deposits are owned by the state. Each province or the federal state is considered the owner of the minerals in their jurisdictions. However, individuals and legal entities may obtain concessions from these entities to explore and develop the deposits and may freely dispose of the minerals extracted within the concession area. Section 8 of the Mining Code establishes the general principle that “the right to explore and develop mines and dispose of them as owners is granted to private individuals and companies in accordance with the provisions of this code”.

The Mining Code enables concessions for exploration and development.

Exploration concessions grant a right to search for mineral resources within a specified area and the right to obtain a development concession if a discovery is made during the term of exploration. The provisions of the Mining Code do not apply to oil and gas deposits. The mining of ores used in the nuclear industry (uranium and thorium), although subject to the Mining Code, must comply with additional regulations.

The second concession is for development, and includes the mine and its deposits as well as the buildings, machinery, vehicles, etc. used in developing the mine. The law considers this concession to be an immovable property distinct from the title to the surface land where it is located. Once the finder's rights are incorporated into public deeds and registered with the Registry of Mines, the development concession gets the title. Development concessions may be sold or transferred like any other real estate property. The transfer document must be notarized and registered with the appropriate administrative mining registry. Mortgages may also be granted for development concessions. Since mineral products are movable assets, once extracted they can be pledged as security for financing purposes.

The law states that concessions can be terminated when certain events happen.

### 14.2 Classification of Mines

There are three classes of mines, based on the type of mineral discovered.

The first class of mines is for gold, silver, platinum, mercury, copper, iron, lead, tin, zinc, nickel, cobalt, bismuth, manganese, antimony, wolframite, aluminum, beryllium, vanadium, cadmium, tantalum, molybdenum, lithium and potassium. Certain fuels, such as mineral coal, lignite, anthracite coal and solid hydrocarbons, and non-metals like arsenic, quartz, feldspar, mica, fluorite, calcareous phosphates, sulfur, borates and precious stones are also included in this category.

The second class of mines is divided into two categories. The first is for metallic sands and precious stones found in river beds and the banks of watercourses, or at the tailing dams of abandoned mines. Minerals falling into this category may be mined by anyone without having to obtain a concession. The second category is for saltpeter, saline lakes, peat bogs, metals not included in the first class of mines, and low-

grade aluminous soils, abrasives, ochres, resins, steatite, barium sulfate, low-grade copper ores, graphite, fine white clay, alkaline salts or earthy alkaline salts, amianths, bentonite, zeolite, and permutite or permutitic minerals. The owner of the surface rights has a preferential right to the deposits within their subdivision, but they must have their claims officially demarcated.

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

### 14.3 Exploration of Mineral Resources

Prior to launching exploration works, the mining company may obtain an exploration concession from the provincial mining authority, whether the land is public or private. The exploration concession grants the explorer the exclusive right to explore and eventually obtain a development concession to work any deposit of any mineral discovered in the concession area. The minerals are not limited to those mentioned in the request for exploration rights.

### 14.4 Development of Mineral Resources

If a discovery is made during exploration, the finder must register the discovery with the provincial mining authority. The territory may not be explored or developed by third parties until the end of the staking proceedings.

The next step is to define the limits of the concession for development. The finder must file a request for a development concession with the mining authority.

### 14.5 Mining Concessions

#### 14.5.1 Acquisition

Mines are acquired through a legal concession. Mines that can be acquired through a concession (original acquisition) are: (i) discoveries and (ii) null and vacant mines.

#### 14.5.2 Effects

A mining concession grants the concessionaire ownership of every deposit found within its boundaries. However, the finder must inform the Mining Authority of the existence of any mineral different from the one registered. This information is needed for determining the mining royalty and the required capital investment. It is preferable to exploit the first class of mines on land containing the second and third class of mines. This allows the concessionaire to exercise the right of accession, form mining groups and acquire the land, among other things.

#### 14.5.3 Withdrawal

Concessionaires can withdraw from a mining concession through a direct and spontaneous act that informs the Mining Authority of their decision to not move ahead with the mining works. A written declaration must be filed as well with the Mining Authority.

#### 14.5.4 Mining Fee

Mines are awarded through the payment of an annual royalty established by the Argentine Congress and paid to the federal or provincial government, depending on the location of the mines.

#### 14.5.5 Investment Plan

The concessionaire must submit an estimate of the capital investment plan to the Mining Authority. Investment must be for (i) works for mine workers, (ii) the building of camps, roads and other constructions for exploration purposes, and (iii) the acquisition of machinery, facilities and production equipment that will permanently be at the mine.

#### 14.5.6 Termination of the Mining Concession

Mining concessions can expire for the following reasons: (a) failure to pay the annual fee; (b) failure to file the estimate of the investment plan; (c) making investments contrary to the requirements of the Mining Code; (d) the amount of the investment made is less than 300 times the annual fee; (e) failure to file the annual affidavit on the progress of the investment plan; (f) committing fraud in the annual affidavit for the development of the investment plan; (g) lack of compliance with the estimated investments; (h) a modification and reduction of the estimated investment without prior notice; (i) withdrawal of assets that reduces the investment plan; and (k) inactivity of the mine for more than four years.

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

Second class minerals are classified into (i) those awarded to the owner of the land as a prior right and (ii) those of common use.

The following are common use minerals: (a) metal sands and precious stones found in river beds, running water and water sources; (b) clearing lands, tailings and cinder dumps of previous exploitations, as long as such mines are abandoned, and abandoned or opened tailings and cinder dumps, as long as the owner does not recover them; and (c) national and municipal-owned quarries, as long as they are not transferred or bound by an agreement.

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

### 14.6 Specific Tax Treatment

Mining activities have special tax incentives that should be carefully analyzed in the decision-making process for a new investment in the area. Legal statutes on tax incentives allow: (a) the financing or reimbursement of the value-added tax payments made by mining companies; (b) a 30-year tax stability for the taxes in force at the time of submitting the feasibility report; (c) the beneficiaries have to right to deduct from their income taxes 100% of the amounts invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works for determining the technical and economic feasibility of a project;

(d) the possibility of accelerating (over three years) the depreciation of investments made on housing, transportation, plant construction and equipment required for the mining activities; (e) the exemption from paying income taxes derived from the profits of the mines and mining rights, used as payment for the subscription of shares of registered beneficiary companies; (f) exemption from paying taxes on the assets; (g) exemption from all import duties and any other taxes for importing capital goods; and (h) a 3% cap on royalties, among other benefits.

## 14.7 Cyanide

The following Argentine provinces have banned cyanide from mineral processing: (i) Chubut; (ii) Tucumán; (iii) Mendoza; (iv) La Pampa; (v) Córdoba; (vi) San Luis; and (vii) Tierra del Fuego. The provinces of La Rioja and Río Negro, which had banned cyanide use for metal processing, revoked the prohibition in 2008 and 2011, respectively.



## 15. Energy

### 15.1 Background: From Regulatory Reform to Emergency Law

In 1992, the power sector was reformed, liberalized and privatized at the federal and provincial levels. At the federal level, the reform was instrumented by Law No. 24,065 and its regulations – Decree Nos. 1398/1992 and 18619/95, and Resolution No. 61/1992, among others. This is known as the Regulatory Framework.

The main features of the Regulatory Framework are:

- (i) Vertical division of the power sector into four 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 (Mercado Eléctrico Mayorista or MEM) so that large users can 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).
- (iv) Creation of an autonomous regulatory agency.

The economic crisis that Argentina suffered in 2002 hit the power sector, too. The Regulatory Framework was affected by Law No. 25,561 (the Emergency Law), which froze public utility rates. The government subsequently implemented measures that discouraged private investments in the sector, leaving the power system in critical condition and reliant on imports from neighboring countries.

Since 2016, the federal government has taken measures to improve the power sector's profitability to attract private investment. The measures include new prices for power generators and an adjustment of transmission and distribution tariffs. The current administration wants to gradually reduce state intervention in the power sector and fully reestablish the Regulatory Framework.

### 15.2 Regulatory Agencies

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

- (i) The national executive branch, through the Ministry of Energy and Mining and the Secretariat of Electric Energy, has the power to set the general policies and rules that govern the sector.
- (ii) The National Regulatory Agency for Electricity (ENRE), an autarchic entity created within the Ministry of Energy and Mining, has 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 Wholesale Energy Market Administrator (CAMMESA) coordinates dispatch operations, determines wholesale prices, administers the economic transactions in the Wholesale Energy Market (MEM) and acts as government off-taker in certain power purchase agreements, acting on behalf of large users and distribution companies (PPA).

### 15.3 Power Generation: The Wholesale Market

The Regulatory Framework allows power generation to be carried out within a competitive market environment. As per the regulatory framework, hydroelectric generation facilities require the concession to be granted by the national executive branch so it can be built and operated. The operation of thermal power generation plants do not require any specific authorization, other than planning, regulatory, safety, transmission and environmental clearances.

The MEM consists of a spot market and a fixed-term market. In the spot market, the real values of power supply and demand are traded. CAMMESA dispatches available units according to production costs, beginning with the most efficient units. The energy price is passed through to end-users by the distribution utilities companies. To enable this process, a seasonal price is calculated by CAMMESA. The seasonal price is a 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 amended as well. As of February 2013, generators are entitled to recover fixed costs and variable costs, calculated based on power generated in line with fuel burnt, plus an additional compensation which varies depending on whether certain availability targets are met.

At the beginning of 2017, new increases in electricity seasonal prices were approved.

### 15.4 Transmission and Distribution

Distribution and transmission companies are regulated as public utilities.

Transmission services are provided by concessionaires that own and operate high- and medium-voltage transmission lines. The business involves the transformation and transmission of electricity from the generators' delivery points to the reception points of distributors or large users. The regulatory framework mandates that transmission companies must be independent from other participants in the MEM, barring them from buying and selling power.

The rates charged by electricity transmission companies include: (a) a connection charge; (b) a transmission capacity charge; and (c) a charge for the actual energy transmitted. Incoming revenues from system expansions are regulated separately. Transmission rates are billed to generators or passed through to end users through distributors.

Distribution companies are in charge of supplying end users whose consumption level prevents them from entering a contract with their power supply independently.

The main features of the concession agreements for power transmission and distribution services were: (a) service supply quality standards which if not met are penalized; (b) a 95-year concession agreement for monopoly service supply within an area or grid, divided into “management terms” for an initial 15 years and subsequent 10-year extensions (at the end of the full term, the majority stock of the corporation may be offered for sale again); (c) the rates are fixed by economic criteria: price caps, following a pre-determined scheme for their calculation and adjustment.

The fees charged by distribution companies consist of the following: a) the price of purchasing power in the MEM (the seasonal price described above); b) transmission costs, and c) an added value for distribution (VAD) to remunerate the distributor’s activity. The VAD represents the economic or marginal cost of the networks available to users, plus the network operating and maintenance costs and management costs. All of these costs are considered within a framework of reasonable business efficiency. The determined rates must make it possible for an efficient distributor to cover operating costs, finance the renewal and improvement of facilities, satisfy growing demand, meet predetermined quality standards and obtain a reasonable return, considering its operational efficacy and efficiency in line with the amounts invested and with the national and international risk inherent to the activity.

At the beginning of 2016, and in line with the price readjustment policy pursued by the federal government to relaunch and recover the MEM and the national power matrix, power transportation and distribution tariffs applicable to services provided by concessionaires operating under federal jurisdiction were substantially raised.

## 15.5 Recent Policy Measures and Investment Programs

In late 2015, the national executive branch declared that the national electricity system under emergency until December 2017. It 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 provided in compliance with suitable technical and economic conditions.

In 2016, CAMMESA launched a public tender process to award power purchase agreements (PPAs) for thermal generation units via Resolution No. 21/2016 of the Secretariat of Electric Energy, and a year later for cogeneration facilities through Resolution 287/2017. Both tenders were aimed at the installation of new generation capacity. Specifically, Resolution No. 287/2017 focuses on combined-cycle and cogeneration facilities.

In 2017, the Secretariat of Electric Energy enacted Resolution No. 19/2017, which allows MEM generators to submit to CAMMESA their commitments of guaranteed availability (*Compromisos de Disponibilidad Garantizada*, or CoDiG) for the power and associated energy of their facilities. The initial term of the CoDiGs is three years, but generators may adjust and extend their CoDiGs each year.

## 15.6 Renewable Energies

Law No. 26,190, passed in 2006, approved the creation of a National Regulatory Framework for Renewable Energies. This law has set a target of getting 8% of the power consumed in the country from renewable sources (wind, solar, geothermal, biomass, biofuels, etc.) by December 2017 and 20% by December 2025, with sequential targets in between. Law No. 26,190 provides tax and customs incentives for renewable power generation projects.

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To meet the targets of Law No. 26,190, the Ministry of Energy and Mining in July 2016 instructed CAMMESA to launch a public tender, called the RenovAr Program, to award long-term PPAs for renewable power. Under these PPAs, CAMMESA acts as the off-taker, prices are denominated in US dollars, and the awarded projects get access to the tax and customs benefits provided by Law 26,190. The off-taker's obligations under the PPA are secured by a public trust called FODER. Awardees may also opt for a World Bank Guarantee as a second-tier security to FODER under certain PPAs termination events.

In Round 1 of RenovAr, 29 renewable projects were awarded PPAs for a total installed capacity of 1,142 MW.

Following the impressive response to RenovAr Round 1, Round 1.5 of RenovAr was launched in October 2016. In this opportunity, companies with solar and wind projects that had been pre-qualified under RenovAr 1 but not awarded a PPA were invited to present new offers.

In RenovAr Round 1.5, 30 projects were awarded PPAs for a total installed capacity of 1,281 MW.

In August 2017, the Ministry of Energy and Mining (i) launched RenovAr Round 2 for 1,200 MW of installed capacity divided between (a) solar, (b) wind, (c) biomass, (d) biogas, and (e) small hydropower plants.

The regulations for implementing renewable corporate PPAs have been approved.

## 16. Oil & Gas

### 16.1 Overview

Argentina is a major player in the South American hydrocarbon market. According to the 2016 edition of the BP Statistical Review of World Energy, Argentina is the largest producer of natural gas and the fourth for crude oil in South America, based on 2015 statistics. Hydrocarbons, especially natural gas, have historically accounted for a large portion of the Argentine energy matrix.

Hydrocarbon production and reserve rates have been falling until recently, forcing the country to import increasing volumes of natural gas and LNG, as well as crude oil and liquid fuels. However, recent reports announcing that Argentina has among the largest volume of shale gas reserves in the world have had a groundbreaking impact on Argentina's position as a global energy player. According to the US Energy Information Administration and Advanced Resources International, Argentina has the second-largest shale gas resources (802 Tcf) in the world and the fourth-largest shale oil resources (27 billion barrels).

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

### 16.2 Ownership and Jurisdiction over Hydrocarbons

Hydrocarbon resources are severable from the general ownership of property. According to the Argentine Constitution, as amended in 1994, natural resources, including hydrocarbon reserves, belong to the provinces where they are located. However, the Constitution empowers the national Congress to legislate on hydrocarbon matters.

Transfer of hydrocarbon resources from federal domain to the provinces was implemented in 2006 through Law No. 26,197. The resources transferred were those located in the provinces and in territorial waters up to 12 nautical miles from a baseline, which in Argentina is the mean low-water line along the coast. With Law No. 26,197, the enforcement of the exploration permits and production and transportation concessions granted by the federal government over these resources prior to the law was transferred to the provinces. The provinces have since handled the granting, enforcement and control of permits and concessions within their territories.

Offshore resources 12 nautical miles beyond the baseline are in federal domain and subject to exclusive federal jurisdiction.

### 16.3 Exploration & Production

The Federal Hydrocarbons Law No. 17,319 of 1967, which has been amended (the Hydrocarbons Law), and several subsequent dispositions have established the basic legal framework for exploration and production (E&P) activities. The Ministry of Energy and Mining (the Ministry of Energy) is the enforcement agency of the Hydrocarbons Law at a federal level.

The main goals of the latest amendment to the Hydrocarbons Law, approved in 2014 through Law No. 27,007, are to provide specific rules for the exploration and development of unconventional resources, the extension of current concessions and the granting of new permits and concessions.

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

To become the holder of a permit or concession, companies must sign on to the registries of oil companies kept by the Ministry of Energy and, in some cases, the corresponding provincial authorities. Registration is granted on the basis of meeting certain financial and technical standards.

Exploration permits allow their holders to do exploration and usually require a minimum investment in that activity. The base term of a permit for conventional exploration is divided into two periods of up to three years each, plus an extension of up to five years. For unconventional resources, the base term is divided into two four-year periods, plus an extension of up to five years. In the case of offshore exploration, the base term is divided into two periods of up to four years, plus an extension of up to five years. At the end of the first period of the base term, the permit holder may choose to (i) revert 100% of the area included in the permit or (ii) keep the entire area and enter into the second period of the base term. At the end of the base term, the holder may choose to extend the term of the permit, subject to reverting 50% of the area.

A permit holder that discovers a commercially exploitable reservoir is entitled to a production concession to develop it. The term of a conventional production concession is 25 years. Concessions for the development of unconventional resources are granted for a term of 35 years. Unconventional production concessions allow conventional exploration and production as ancillary activities subject to the payment of a production bonus and an additional royalty of 3%. Offshore production concessions are granted for a term of 30 years. In all cases, the concessions may be extended for successive 10-year periods.

For the production concessions, unconventional hydrocarbon production is defined as the extraction of oil and gas through unconventional stimulation techniques applied to deposits in geological formations characterized by the presence of rocks with low permeability. These include shale or slate rocks —shale oil and shale gas, compact sandstones —tight sands, tight oil and tight gas, and layers of coal —coal bed methane.

Holders of permits and concessions are required to pay royalties to the grantor —the federal or the provincial government— at a 15% rate for exploration permits and at a 12% rate for production concessions. Royalties are increased by 3% each time a concession is extended, up to a maximum of 18%. Royalties may be lowered to 5% under exceptional circumstances. Permit holders and concessionaires must also pay the grantor a surface canon based on the acreage of the permit or concession.

## 16.4 Midstream

The 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 via two different regulations: the Hydrocarbons Law, which applies to all hydrocarbons, and the Natural Gas Law No. 24,076 (the Natural Gas Law), which is applicable 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 except if there is a “force majeure” event or other event that affects the operating conditions of the transportation facilities. The services are also subject to open access and regulated tariffs.

#### 16.4.1 Transportation under the Hydrocarbons Law

The holder of a production concession is entitled to obtain a concession to transport its production of hydrocarbons.

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

The transportation of hydrocarbons according to the Hydrocarbons Law is regulated by Federal Decree No. 44/1991, which expressly states that transportation facilities operated under concessions granted according to the Hydrocarbons Law are subject to open access and maximum regulated tariffs.

#### 16.4.2 Transportation and Distribution of Natural Gas under the Natural Gas Law

The five main high-pressure gas pipelines in Argentina are divided into two systems based on geography: north and south. Both of the systems are designed to have access to gas sources and the main centers of demand, including Greater Buenos Aires.

The gas distribution networks are divided based on geography in nine systems.

Each of the transportation and distribution systems is operated under a license granted by the federal government in accordance with the Natural Gas Law.

The Natural Gas Law governs the transportation, storage, marketing and distribution of natural gas and defines transportation and distribution as public services. This means that transportation and distribution services must be provided on an open access and non-discriminatory basis, and are subject to regulated tariffs.

This law establishes several restrictions on cross ownership for companies operating in different segments of the gas industry, including producers, distributors, large consumers, transportation companies and marketers. ENARGAS is the enforcement agency of the Natural Gas Law.

Given the country’s shortfall of natural gas production to meet domestic demand, the transportation and distribution of gas is subject to a special regulatory regime aimed satisfying the demand of protected consumers (homes and small businesses). Under this regime, natural gas producers must allocate a set volume of natural gas to meet the demand of protected customers. The delivery of gas to other customers (i.e., natural gas vehicles and industries) is permitted when the demand of protected customers is met.

After years of frozen transportation and distribution pricing, including the rates homes and small businesses pay, tariffs have been substantially increased.

### 16.5 Downstream

Hydrocarbon-refining activities are subject to Law No. 13,660 of 1949, which provides the basic regulatory framework for these activities, whether done by oil producers or third parties.



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

## 16.6 Market Regulation

The domestic prices of crude oil and the retail prices of liquid fuels are subject to an agreement between oil producers and refiners sponsored by the federal government. The agreement expires at the end of 2017.

Natural gas prices for industries can be freely negotiated, but they are regulated for power generation and residential customers.

The export of crude oil, natural gas and their derivatives is subject to prior governmental approval. The granting of export authorizations for natural gas is suspended, with the exception of temporary exports subject to re-importation commitments. The import of crude oil and liquid fuels requires prior governmental approval.

## 16.7 Incentive Programs

Over the last few years, the federal government has created programs to promote investment in exploration and production with the aim of rebuilding gas reserves over the medium and long term so the country can regain self-sufficiency in gas. The main programs are Gas Plus and Gas Plan.

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 are no longer available for new projects, but the projects that were already awarded these benefits will continue to enjoy them.

Under its current format, Gas Plan is available for unconventional gas production in the Neuquén Basin. Producers and the provinces where the gas is produced are entitled to a compensation payable by the federal government which amount is determined as the difference between the producer prices and a minimum price, which will decrease from USD 7.50/MMBtu in 2018 to USD 6.00/MMBtu in 2021. Of the compensation, 88% goes to the producers and the remaining 12% to the provinces.

The federal government incentives for the Neuquén Basin are made available under a framework agreement for the oil sector. The federal government, Neuquén Province, the oil unions and oil companies entered into the agreement in 2017. As part of the agreement, Neuquén agreed not to increase the tax burden on the oil sector and committed to make investments to improve the province's logistics infrastructure with the help of the federal government. It is expected that similar agreements will be reached with other hydrocarbon-producing provinces to make the Gas Plan incentives available for the gas produced in the basins of those provinces.

Another incentive was created with Federal Decree No. 929/2013. It is available for direct investment projects in hydrocarbon exploration and production at a minimum of USD 1 billion over a five-year term. This regime is also available for direct investments of USD 250 million or more over a three-year term. The benefits of this program include: (i) the right to export a portion of the hydrocarbons produced by the project; (ii) the right to export those hydrocarbons free of export duties, or a 0% rate; (iii) the right to do as you wish with the foreign-currency proceeds from the export deal; and (iv) in the event that there is a shortfall of hydrocarbons in Argentina and exports are restricted to meet local demand, then the exporter will be entitled to international prices for the hydrocarbons that could have been exported and were not. In such a case, a



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compensation mechanism for payment in local currency will 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 prevented from export, including the amounts collected for their sale in the domestic market plus any compensations received under the above mechanism.

The benefits of this regime can be enjoyed as from the third or fifth year, depending on the abovementioned investment amounts of the projects, and applies to 20% of the production in the case of onshore projects and up to 60% for offshore projects.

Another benefit for the oil and gas sector is a reduction on the duties for importing capital goods and supplies essential for the investment projects.

## 16.8 Environmental Regulations

The provinces have the power to legislate and regulate environmental matters. Provincial environmental regulations must set standards equal to or higher than those approved by the Federal Congress.

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

Based on the latest amendment to the Hydrocarbons Law, the federal government and the provinces must work towards enacting a uniform environmental legislation for the oil industry with the purpose of implementing best practices for environmental hydrocarbon management for exploration, production and transport.

## 17. Telecommunications

### 17.1 Control Authority

On December 16, 2014, the Argentine Congress approved a new telecommunications law called the Argentina Digital Law No. 27,078 (the Information and Communications Technology, or ICT Law). This replaced former Law No. 19,798 (the former Telecommunications Law), which had been amended, and Decree No. 764/2000, also amended. The replaced legislation 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 the ICT Law.

On January 4, 2016, a Necessity and Urgency Decree, No. 267/2015 (Decree 267), was published. It has: (i) partially amended the ICT Law and Audiovisual Communications Law No. 26,522 (the ACS Law); (ii) created Enacom (*Ente Nacional de Comunicaciones*) as a new control authority to replace the former authorities (AFTIC and AFSCA) in charge of the telecommunications and audiovisual communications industry; and (iii) created a special committee to draft a unified and updated law that will replace the ICT and ACS laws.

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 network neutrality. The aim is to guarantee the human right to communication, giving access to information and communication to all residents in social and equitable geographical conditions.

It also allows ICT licensees to provide audiovisual communications services, except for satellite services. Conversely, licensees of audiovisual communications services can provide ICT services. However, Decree No. 267 establishes a temporary restriction on providing broadcasting subscription services for telecom companies with licenses for (i) specific basic landline telephony and (ii) mobile communications. Decree No. 1340/2016 establishes that those licensees are able to start providing such services as from January 1, 2018 within the Multiple Area of Buenos Aires and the cities of Rosario, (Province of Santa Fe) and Córdoba (Province of Córdoba). For the rest of Argentina, the Enacom will determine the starting date to provide those services by the licensees.

### 17.2 Key Issues

Until Enacom issues new regulations and except for those already enacted, as described below, Decree No. 764/2000 is applicable. The main aspects of this decree are:

#### 17.2.1 Licensing Rules for ICT Services

There is a single nationwide license scheme for providing ICT services to the public. This scheme 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, and only the specific services covered by that license.

There are no restrictions on foreign investment in the telecommunications market, other than those established by the Law No 25,750 (Media Ownership Law) of June 18, 2003 for providers of internet access services. For further information on this, see Section 17.3 below. Foreign companies must be registered as at least a local branch before the local Public Registry of Commerce to apply for a telecommunications license.

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

### **17.2.2 Universal Service General Rules**

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

Universal Service is the set of services and programs, variable in time and defined by the government, provided so the whole population has access with a certain quality and affordable prices, regardless of their location, social and economic inequalities, and physical disabilities.

Each telecommunications services provider is obliged to contribute to a fiduciary fund created to finance Universal Service. The contribution is equivalent to 1% of the provider's total income from the provision of telecommunications services, minus taxes and fees.

### **17.2.3 National Interconnection Rules**

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

### **17.2.4 Rules of Administration, Management and Control of the Radio Spectrum**

The rules of the administration, management and control of the radio spectrum determine that the radio spectrum is an intangible, scarce and limited resource that may be administrated exclusively by the Argentine State.

### **17.2.5 Rights-of-Way/Tower Siting**

Since Argentina is a federal state, each province and municipality may enact its own regulations on public law. As such, each province and municipality has its own regulation on tower siting/rights-of-way.

### **17.2.6 Passive Telecommunications Infrastructure**

According to Decree No. 798/2016, independent companies sharing passive telecommunications infrastructure (e.g., towers) do not require an ICT services license to carry out their activity, as long as they do not discriminate and meet the applicable local regulations for tower siting.

### 17.2.7 Spectrum Authorization

In Argentina, a service license is separate from the technically required frequency authorization. In particular, the legal framework allows for the granting of a telecommunications license, but this does not mean that Enacom guarantees that there are resources (frequency channels) for supporting the requested service.

The telecommunications licensee decides which technology and infrastructure it requires for providing services. Any request for frequency authorization must be submitted to Enacom for approval, based on a full telecommunications project. This includes but is not limited to point-to-multipoint-link studies, interference analysis, site locations, radiated power, antennas gains and types, etc.

### 17.2.8. Telecommunications Equipment

A company importing or manufacturing telecommunications equipment must be registered with Enacom's Registry of Telecommunications Activities and Materials (*Registro de Actividades y Materiales de Telecomunicaciones* – RAMATEL). The device must also be approved by the same special registry.

Telecommunications equipment is approved by Enacom, and testing should be done locally. Enacom controls the quality and technical standards of the equipment used for telecommunications.

## 17.3 Transfer of License or Change of Control

According to Section 13 of the ICT Law, as amended by Section 8 of Decree No. 267, parties are permitted to close a transaction that implies (i) a direct or indirect change of controlling shareholdings in an ICT company in Argentina, or (ii) the transfer of an ICT license (telecom transaction) once Enacom approval has been obtained, as long as 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 of closing the telecom 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 telecom transaction without Enacom's explicit or deemed approval will be subject to revocation of the license by Enacom.

## 17.4 Mobile 4G Services

In October 2014, the Secretariat of Communications (Secom) called bidding for the remaining slots of 3G frequencies and 4G frequencies. Mobile telecommunications licensees have since started to provide 4G services in the country, and also to improve their infrastructure.

In July 2017, Enacom authorized the use of certain frequencies within the 2.5Ghz range for mobile telecommunications licensees to provide mobile services. These authorizations were granted on an on-demand basis.

## 17.5 Mobile Virtual Network Operators

Enacom Resolution No. 38/2016 establishes the general rules to apply for a Mobile Virtual Network Operator license (MVNOs). Mobile Network Operators (MNO) are obliged to submit once a year a reference proposal to the MVNOs with details of the conditions and prices of the services and facilities to be provided to the MVNOs.

The MNOs must also offer the MVNOs any new services and technologies that they also offer their users.

## 18. Broadcasting

### 18.1 Control Authority

On October 10, 2009, the Argentine Congress approved Audiovisual Communication Services Law No. 26,522 (the ACS Law), repealing the former Law No. 22,285 (the Broadcasting Law) that had governed the operations of broadcasting companies since September 1980. Decree No. 1225/2010 as issued August 31, 2010 to regulate the ACS Law.

On January 4, 2016, a Necessity and Urgency Decree, No. 267/2015 (Decree 267), was published. It (i) partially amended Law No. 27,078 (the "ICT Law) and the ACS Law; (ii) created a new control authority called Enacom (*Ente Nacional de Comunicaciones*) to replace the former authorities (AFTIC and AFSCA) in charge of the telecommunications and audiovisual communications industry; and (iii) created a special committee to draft a new unified and updated law to replace the ICT and ACS laws.

The ACS Law states that audiovisual communications services are an activity of public interest. It also includes regulations for the advertising agencies, content producers and channels.

### 18.2 Key Issues

#### 18.2.1 Licenses

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 using the radio spectrum will be awarded through an open and permanent bidding process. The executive branch will award licenses for which the primary service area is greater than 50 km and has more than 500,000 inhabitants. Enacom will award through a bidding process the rest of the open and subscription-based services that use non-satellite radio links.

#### 18.2.2 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, given that it is a public service provider under a national, provincial or municipal license, concession or permit. The restrictions on public service providers do not apply to non-profit organizations.

#### 18.2.3 Capital of the Licensees

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

#### 18.2.4 Limitations to Multiple Licensing

The ACS Law includes certain limitations on multiple licensing:

- (i) At a national level:
  - Up to one license for satellite broadcasting. A holder of this license cannot 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 one license for AM radio.
  - Up to one license for FM radio, or two licenses for FM radio if there are more than eight licenses in the same primary services area .
  - Up to one license for free-to-air television services.
  - In no case may a holder have more than four licenses in the same primary service area.

#### 18.2.5 Term of Licenses

Licenses will be valid for 10 years with a possible extension for another five years, which can be automatically granted upon request to Enacom. Enacom may grant subsequent renewals for 10-year periods. However, the national Ministry of Communications may call a bidding process for new licensees.

#### 18.2.6 Restrictions on Foreign Investment

The ACS Law, in line with other previous laws such as Media Ownership Law No. 25,750 (more details are available in Section 17.3 below), puts restrictions on the relationship of individual and company licenses with foreign companies. These include:

- (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. 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 the above points (i) and (ii) will not be taken into account when international treaties to which Argentina is a party establish effective reciprocity in the activity of audiovisual communications services. The 30% foreign participation cap may be increased by virtue of the reciprocity conditions agreed

on between Argentina and the foreign country where the foreign investor is based. Reciprocity is based on the rights that the law of the country where the investor is based allows an Argentine investor to participate in broadcasting companies.

#### 18.2.7 Cable Television Services

According to Decree No. 267, licenses for the exploitation of physical link and radio-electric link subscription cable television services have been renamed as “Registrations” of a *Licencia Única Argentina Digital*. They are governed by the ICT Law in accordance, principally, with the legal framework described under Section 16 for telecommunications above.

In accordance with Enacom Resolution 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 from Enacom will be needed.

#### 18.2.8 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.

#### 18.2.9 Content Regulations

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

Open television network services must broadcast a minimum of 60% of domestic productions. A minimum of 30% of the content must be self-produced, including local news programs and an equal percentage of independent local productions in cities of more than 1.5 inhabitants. For localities of more than 600,000 inhabitants, the minimum is 15%, and for all other localities it is 10%.

#### 18.2.10 Advertisements

Advertisements must be domestically produced when broadcasted on open broadcasting services or on channels owned by subscription services licensees, or when inserted in domestic channels. The regulations incorporated the possibility of including commercials of foreign origin in these media if the advertiser or advertising agency can provide evidence to Enacom of reciprocity conditions between Argentina and the country where the ad is sourced.

The ACS Law also rules on other aspects of ads to be aired by broadcasting licensees, such as time limits for broadcasting ads, special content, and the obligation of registering the advertising agency or the direct advertiser.



### 18.2.11 Taxes

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

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

## 18.3 Transfer of License or Shares in a Licensee

According to Section 41 of the ACS Law, as amended by Section 16 of Decree No. 267, (i) audiovisual communications licenses; and, (ii) shares in an audiovisual communications service company (Media Transaction) are transferable provided that the purchaser provides evidence to Enacom of the fulfillment of all 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 after closing. The parties are required to submit the request for approval to Enacom within 30 days of closing the Media Transaction. Enacom's approval may be granted explicitly or be deemed approved if 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 Enacom may result in the revocation of the license by Enacom.

## 18.4 Media Ownership Law

On June 18, 2003, the Argentine Congress enacted the Media Ownership Law, which restricts the participation of foreign investors in communications media companies to 30% of the entity's voting capital stock. According to the Media Ownership Law, communications media companies include 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 the virtue of reciprocity conditions between Argentina and the foreign country where the foreign investor is based. The reciprocity is based on the allowance that an Argentine investor can participate in broadcasting companies in the country where the foreign investor is based.





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