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This booklet is intended to provide readers with basic information concerning issues of general interest. It does not purport to be comprehensive or to render legal advice. For advice about particular facts and legal issues, the reader should consult legal counsel. The information provided is as of 1 September 2008. References to US Dollars will be "US\$" and references to Argentine Pesos will be "A\$".



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1. Introduction

1.1 Background: Geography, Demography and Political System

1.1.1 *Geography and Demography*

The Republic of Argentina is comprised of 23 provinces and the Federal Capital: the Autonomous City of Buenos Aires. Located at the extreme south-east of the South American continent, Argentina is the eighth largest country in the world and the second largest in Latin America, covering some 3.8 million square kilometres (1.5 million square miles). Argentina has an estimated population of approximately 41 million people, of which 12 million live in the city of Buenos Aires and the greater Buenos Aires area. The overall population density is about 14 persons per square kilometre.

1.1.2 *The Constitutional and Political System*

Argentina is organised as a federal republic with a democratic political system. The Argentine Constitution, adopted in 1853, provides in its present form for a tripartite system of government consisting of an executive branch headed by the President, a legislative branch and a judiciary.

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

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

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

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

1.2 Information for the Foreign Investor

1.2.1 *Argentine Foreign Investment Regime*

Foreign investments in Argentina are regulated by a framework of international treaties and Argentine laws that establish the norms for choice of law and jurisdiction, legal treatment of foreign investors, monetary policy and foreign exchange.

In general, foreign investors wishing to invest in Argentina, either by starting up new businesses or by acquiring existing businesses or companies, do not require prior government approval except for regulated areas or for general applicable regimes such as antitrust regulations. However, if a foreign company's



investment consists of holding equity of an Argentine company, the foreign company must register with the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and comply with certain periodic reporting requirements. Please refer to Section 2.1.2 below for a more detailed description of these registration and reporting requirements, and to Section 6.3 below for a description of antitrust regulations.

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

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

One of the only foreign investment sectors still restricted in Argentina is broadcasting, but the Investment Protection Treaty with the United States has been construed as repealing restrictions for U.S. investors. Furthermore, Law No. 25,750 enacted in 2003 eases that restriction by allowing up to 30% foreign ownership of Argentine broadcasting companies (however, because of lack of precedent, uncertainty remains as to its actual application). In addition, foreigners who wish to purchase land located in frontier and other security areas, or who have a controlling participation in a company owning such land, must obtain prior government approval, which is usually obtained.

1.2.2 Monetary Policy and Foreign Exchange

1.2.2.1 End of Convertibility and Pesification of Foreign Currency Obligations

Convertibility (which had kept the Peso pegged to the U.S. Dollar at a US\$ 1 = A\$ 1 rate) ended on January 6, 2002 with the enactment of Law No. 25,561, Decree No. 214/02 and implementing regulations. Since then the Peso has devalued (approximately US\$ 1 = A\$ 3 for the purchase of U.S. Dollars as of *September 1, 2008*).

1.2.2.2 Exchange Controls and Cross-Border Currency Transfers

Beginning 2002, the Government reinstated exchange controls, mainly affecting the inflow and outflow of funds to and from Argentina.

Argentine and non Argentine residents can only transfer, purchase and sell foreign currency in the single foreign exchange market (the "FX Market") in transactions generally authorized by foreign exchange regulations.

There are no restrictions on cross-border transfers for foreign direct investments, repatriations thereof, and payment of dividends, provided certain requirements are met.

Argentine residents must transfer to Argentina and settle for pesos the proceeds of foreign financings granted by foreign residents.

Unless qualifying for an exemption, foreign financings are subject to a 365 day mandatory deposit in U.S. Dollars with a local financial entity equal to 30% of the financing proceeds sold in the FX Market (the "Mandatory Deposit"). The qualifying exemptions include, among others, loans granted by multilateral credit agencies and official credit institutions approved by the Central Bank, international trade financings, initial public offerings of debt securities listed on self-regulated markets and certain loans granted to finance



investments in non-financial assets. Principal can only be repaid 365 days after the proceeds have been sold in the FX Market (the "Mandatory Waiting Period"), unless a qualifying exemption applies (e.g. international trade financings).

Subject to the above and to compliance of certain other formal requirements, principal and interest payments of foreign financings can be paid without Central Bank prior approval.

Portfolio investments of non Argentine residents are subject to a Mandatory Deposit and Mandatory Waiting Period (with certain exemptions, such as the initial subscription of debt securities and shares of local companies which are publicly offered and listed on self-regulated markets). Repatriations of portfolio investments in excess of an aggregate amount of US\$ 500,000 per calendar month are subject to prior Central Bank approval.

The execution of, and cross-border transfers under, derivative transactions require the prior approval of the Central Bank, unless they qualify for a specific exemption, such as those available for derivatives intended to hedge certain external debt, interest rate and commodity risks.

The exchange rate fluctuates freely in the FX Market, although the Central Bank participates buying and selling US Dollars in accordance with the Government's monetary policy.

1.2.2.3. Repatriation of Export Proceeds

Exchange controls also reinstated the obligation to repatriate and sell in the FX Market foreign currency proceeds from the export of goods and services within the terms provided in the regulations (which in the case of goods depend on the type of the exported product). Certain activities benefit from exemptions granted through specific regulations and/or government contracts. The proceeds from the export of goods which are then applied to the repayment of qualifying export related financings are exempted from this repatriation obligation, provided that the proceeds of these financings were originally transferred to Argentina and settled for pesos in the FX Market.

1.2.3 Investment Protection and Promotion

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

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

In addition, in recent years Argentina has signed treaties for the promotion and protection of foreign investments with a number of countries, including the United States, Germany, Switzerland, Italy, the United Kingdom, Belgium, Japan, Canada, France, Chile, Spain, Sweden, Austria, Holland, Denmark, Australia, New Zealand and China.



1.2.4 Membership of Regional Economic Trade Groups and International Organisations

Argentina's relationship with the rest of Latin America is based upon co-operation in trade and investment issues, most notably with the creation of the Mercosur Common Market ("Mercosur"), comprising Argentina, Brazil, Paraguay and Uruguay. Venezuela is also in the process of becoming a member. Mercosur calls for a gradual elimination of all tariff barriers between its members and a common external tariff with respect to the rest of the world. This has resulted in a substantial increase in intra-Mercosur trade.

On a global scale, Argentina is a charter member of the United Nations, a founding member of the Organisation of American States and a member of the World Trade Organization.



2. Argentine Investment Vehicles

2.1 Principal Types of Business Entities

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

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

The basic characteristics of the branch, the corporation and the limited liability company, according to Argentine law and the regulations of the *Inspección General de Justicia* of the City of Buenos Aires ("*IGJ*") are provided below.

2.1.1 Branch of a Foreign Entity

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

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

2.1.2 Corporation (*Sociedad Anónima* - "SA")

Capital and Shareholders - At least two shareholders, which can be either corporate entities or individuals, are required to set up an SA. Minimum capital is A\$ 12,000 (*i.e.* approx. US\$ 4,000 at the present exchange rate). While the share capital must be fully subscribed upon incorporation, only 25% need be paid up on such shares and the balance within two years thereafter. Contributions in kind of real estate, equipment or other non-monetary assets must be made in full at the time of subscription.

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

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

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



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

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

Supervision - Argentine companies are subject to the external supervision of the PRC and the internal supervision of controllers or supervisors ("*síndicos / comisión fiscalizadora*") appointed by the shareholders.

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

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

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

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

Capital and partners - A minimum of two and a maximum of 50 partners, who may be individuals or corporate entities (except for SAs and Argentine limited liability companies with share capital ("*Sociedades en Comandita por Acciones*"), may set up an SRL. Foreign corporate entities have been admitted as partners of SRLs provided that they are empowered to participate in such companies by the laws of their jurisdiction of incorporation.

Capital must be fully subscribed, denominated in Argentine currency and divided into partnership quotas. One quarter (25%) of the capital must be paid up by the partners at the time the SRL is formed and any balance must be paid up within two years thereafter. Where quotas are issued in consideration for contributions in non-monetary assets they must be fully paid up.

Partnership quotas must be of equal par value and entitle the holder to one vote each. Partners in an SRL are entitled to pre-emptive rights with respect to new issues of quotas.

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

Partners' meetings - SRL by-laws normally contain the rules for adopting resolutions, therefore, unless the by-laws provide otherwise, resolutions may be passed in writing without the need for holding a meeting. If one partner holds the majority vote, the vote of another partner will be necessary in order for the Partners' Meeting to be considered valid.

Supervision - The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs unless their capital amounts to A\$ 10,000,000 or more, in which case one or more



statutory supervisors or a supervisory committee must be appointed. When statutory supervisors or a supervisory committee are appointed, the rules for SAs generally apply.

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

2.1.4 *Mergers and Spin-offs*

2.1.4.1 *Mergers*

The Argentine Companies Law regulates mergers. The law provides for two types of mergers:

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

Creditor's Rights - In order to protect creditors' rights, a notice of merger must be published in the Official Bulletin in each company's jurisdiction and in a newspaper with nation-wide circulation.

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

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

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

2.1.4.2 *Spin-offs*

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

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



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

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

Right of withdrawal - Similar rules to those applicable to mergers apply.

Registration - Once the periods provided for rights of withdrawal, objection by creditors and application for judicial liens have elapsed, without any claims pending, the by-laws of the new company and the amendment to the by-laws of the spinning off company will be executed and registered at the PRC and the spin-off will be effective with respect to third parties.

2.2 Other Forms of Investment Entity

2.2.1 Partnerships

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

2.2.2 Joint Ventures (UTE)

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 Companies Law. A non-resident corporation may be a member of an Argentine UTE subject to it complying with the same kind of registration proceedings with the RPC as those applicable to a branch of a foreign company.

All UTEs and their representatives must be registered with the PRC 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 labour law, social security contributions and for value added and turnover tax. With respect to other taxes, such as income tax and the tax on assets, UTEs are considered as transparent entities, and such taxes are therefore payable in the hands of the members.

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

2.2.3 Trusts

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



Law No. 24,441 establishes that a trust will be created upon the transfer of certain assets by one person (the settlor) to another person (the trustee), who undertakes to exercise the rights attributable to ownership of such assets for the benefit of a person designated in the relevant agreement as the beneficiary (the beneficiary) and to transfer the assets, upon the expiry of the trust term or upon fulfilment of a certain condition, to the settlor, beneficiary or trustee.

Pursuant to Argentine law, assets held in a trust form a separate estate from the estates of the trustee and the settlor. They therefore will not be affected by any individual or joint actions brought by the trustee's or settlor's creditors, except in the case of fraud by the settlor.

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

2.3 Certain Regulated Activities

2.3.1 *Financial Institutions*

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

In addition, the Central Bank has power to establish the scope of permitted and prohibited activities, and to place limits on credit, indebtedness, minimum capital, reserves, net worth requirements and concentration of risks. Many of the requirements of the Central Bank mirror the risk-weighted criteria provided in the Basle Committee guidelines.

The FIL provides the regulatory framework for commercial banks, investment banks, mortgage banks and finance companies. It also regulates savings and loan companies for housing and other real estate (the "saving and loans companies") and credit associations (commonly known as "*Cajas*") which generally have limited functions and a smaller impact on the market.

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

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

The other financial institutions are limited to specifically authorised transactions.



2.3.2 Insurance Companies

Insurance and reinsurance activities in Argentina are governed by the Insurance Law No. 20,091, as amended. This law states that insurance and reinsurance activity may only be performed by one of the following types of entities with the prior approval of the National Insurance Surveillance Agency (the "NISA"):

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

The NISA, at its sole discretion, may approve or reject authorizations for the formation of a new insurance company. Transfers of shares of previously authorised insurance companies are allowed with the approval of the NISA.

The basic classes of insurance license currently granted by the NISA are related to life, property and casualty, motor, liability, guarantee, retirement, employer's liability, mortgage, burial and public transportation insurance policies.

Insurance companies are subject to reporting requirements. Among other things, they must file copies of resolutions passed at shareholders' meetings, financial statements and statistical information relating to the types of insurance sold.

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

2.3.3 Pension Funds

2.3.3.1 Individual Capitalisation Pension System

Pursuant to Law No. 24,241 (the "Pension Funds Law") there is an individual capitalisation pension system, launched in 1994, which coexists with the state collective system, "*Régimen de Reparto*."

All workers who opt to participate in the capitalisation system make monthly contributions equal to a percentage of their salaries, which are deposited in personal retirement accounts managed by pension funds ("*Administradoras de Fondos de Jubilaciones y Pensiones*" or "AFJP") of their choice. The contributor is considered the owner of the contributed funds and is entitled to receive benefit payments from such funds upon reaching retirement age. Those workers who do not opt to use the capitalisation system deposit their monthly contribution with the state system. The contributions are payable to the State in order to be used to fund retirement and pension benefits paid under the "*Régimen de Reparto*".

2.3.3.2 AFJP Regulations

The accounts maintained by AFJPs may be used to fund the following: (a) ordinary retirement benefits, (b) disability benefits, and (c) lump sum payments to beneficiaries in the event of the participant's death.

Under the capitalisation system, workers may select from among existing AFJPs on the basis of their investment performance and fees. In order to safeguard the funds managed by the AFJPs, the Pension Funds Law requires that assets and liabilities of the AFJPs be legally and administratively segregated from



such funds, which are considered the property of the contributors and the beneficiaries. Accordingly, if an AFJP becomes insolvent, the company may be liquidated without impairing or depleting such funds.

In general, the AFJPs are privately held stock corporations whose permitted activities are limited to the administration of pension funds. The power to regulate and supervise AFJPs is vested in the State Superintendence of Retirement and Pension Fund Administrators.

AFJPs are required to maintain a minimum capital of US\$ 3 million. Furthermore, a "Security Reserve" equivalent to 2% of the managed funds must be created and must never fall below US\$ 3 million.

The detailed regulations which govern the funds managed by AFJPs provide that, amongst other things, the funds may only be invested in the following instruments: securities issued by the federal government, the provinces and municipalities; debt instruments, whether convertible or not, issued by Argentine corporations and financial institutions and listed on a stock exchange; fixed-term deposits in Argentine financial entities; equity issued by Argentine corporations and listed on a stock exchange; futures and options related to such equity; quotas of closed or open-ended mutual funds listed on a stock exchange; and securities issued by foreign sovereign states.

The regulations also limit the holding of each instrument by a Fund to a given percentage of that fund.

Fund investments are also subject to diversification requirements.

2.4 Capital Market Regulations

The Argentine securities market is regulated nationwide by Law No. 17,811, enacted in 1968, as amended ("Securities Law"). The *Comisión Nacional de Valores* (the "CNV") which administers the Securities Law is a government agency empowered to issue further regulations in the form of mandatory resolutions (CNV Resolutions). Decree No. 677/01, enacted on 22 May, 2001, addresses several aspects relating to transparency in the public offers regime, such as participation in public offerings, disclosure of relevant information, tender offers, insider trading and market manipulation. It also contains further regulations with respect to the supervisory capacity of the CNV, summary investigations and administrative sanctions imposed under the Securities Law.

The securities market is divided from a regulatory viewpoint into a private market and a public market. This division is based on the concept of "public offer". A public offer is an invitation, made by an issuer or by individuals or companies engaged fully or partially in the purchase and sale of securities, to the general public, or certain sectors or groups thereof, made through personal offers, newspaper advertisements, radio or television broadcasts, films, billboards, signs, programs, circulars, printed notices or by any other means, to enter into any transaction involving securities. The term "transaction" is construed by the Securities Law in the broadest sense, including the initial issue and placement of securities (primary offer), as well as the subsequent purchase and/or sale thereof (secondary market), whether by traditional or electronic means. Only public offers of securities are subject to the Securities Law. Neither the Securities Law, the CNV regulations nor Decree No. 677/01 include a definition of private placement, much less a specific safe harbour of the type often found in the laws of other jurisdictions. Therefore, the concept of private placement may only be defined by exclusion as any placement of securities that is not deemed to be a public offering.

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



Issuers who have received authorization must continue to observe certain reporting requirements as long as they are authorised to publicly offer securities. There are approximately 14 stock exchanges in the country, of which the Buenos Aires Stock Exchange is the most important.

Securities in Buenos Aires are traded in self-regulated organisations such as the Buenos Aires Stock Exchange and the over-the-counter market (the *Mercado Abierto Electrónico*, "MAE"). The only persons authorised to effect transactions in securities listed on the Buenos Aires Stock Exchange are the stockholders of the *Mercado de Valores S.A.* (the "Merval"), which is the company that oversees brokerage activities and transactions on the floor of that Stock Exchange. Individuals or brokerage firms organised as sole-purpose corporations ("*sociedades de bolsa*"), including subsidiaries of commercial banks, are allowed to become stockholders of the Merval. The MAE is an electronic market in which only over-the-counter dealers ("*agentes de mercado abierto*") registered with the CNV may trade securities.

The clearing of transactions on the Buenos Aires Stock Exchange is carried out through its affiliated organisation, the *Caja de Valores S.A.*, which is the Argentine clearing agency that provides central depository facilities for securities and may act as a transfer and paying agent. Settlement is carried out through the Merval. Over-the-counter transactions are cleared and settled by their respective parties, and the participants (known as depositors) may deposit traded securities with the *Caja de Valores S.A.*, which then holds them on behalf of their principals ("*comitentes*").

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

The CNV has power to require the rating of any securities to be offered to the public. In addition, issuers may request that the rating agencies rate their securities. Rating agencies must be approved and authorised by the CNV.

2.4.1 *Insider Trading*

Decree No. 677/01 and several CNV regulations are aimed at preventing the misappropriation of non-public information and guaranteeing fair dealing in the securities market. The CNV must be informed of any relevant facts that may have a significant effect on the purchase and sale of securities. In addition, the CNV imposes a duty on certain persons to keep secret all information that has not been publicly disclosed and which may have an impact on the price of securities. Furthermore, the use of privileged information for the benefit of the persons who have access to such information or for the benefit of third parties is forbidden.

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

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



2.5 Anti-Money Laundering Regulations

Money laundering is now defined as the exchange, transfer, administration, sale or any other use of money or other assets with an aggregate value of more than A\$ 50,000 obtained through a crime, by a person who did not take part in such crime, if the possible consequence of the conduct of that person is to grant to the money or assets the appearance of having been obtained by legitimate means. Concealment is now defined to include helping a criminal to keep safe the proceeds of a crime and acquiring, receiving or concealing money or other assets obtained by means of a crime.

2.5.1 *Enforcement*

The anti-money laundering regulations provide for the creation of the Financial Information Unit (the "Unit"), a special agency responsible for monitoring compliance with the law, with special emphasis on the prevention of money laundering related to drug trafficking, weapons smuggling, child prostitution and pornography, corruption, and racially or politically motivated crimes. The Unit is managed by a board that includes representatives of the Central Bank, the CNV, the Secretary of Drug Prevention and two experts in the relevant fields.

2.5.2 *Information Requirements*

Certain types of companies and individuals, including financial entities and broker-dealers, are required to report suspicious activities and provide information on a regular basis to the Unit. Those companies must:

- (i) obtain from their customers documentation that proves their identity, domicile and other basic data to be determined by implementing regulations to be issued by the Unit;
- (ii) store such customer data in the manner and for the periods to be determined by implementing regulations to be issued by the Unit;
- (iii) report to the Unit any suspicious transaction (defined as any transaction that, based on the experience of the reporting company and taking into account customary practices for that type of transaction, is unusual, lacks economic or legal justification or involves unjustified complexity); and
- (iv) abstain from disclosing to the customer or third parties any information concerning such suspicious transactions or any pending proceedings.

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



3. Tax Considerations

3.1 Income Tax

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

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

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

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

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

3.1.1 Rates of Income Tax

The tax rate applicable in Argentina upon the net income of corporate entities domiciled in Argentina, such as SAs or SRLs, is thirty five percent (35%).

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

The distribution of dividends to shareholders in SAs, the distribution of income to partners in SRLs and remittances of profits abroad by branches or establishments are in general not subject to tax in Argentina. However, the distribution of dividends, income or remittances of profits may under certain circumstances be subject to tax.

Individuals are taxed upon a sliding scale ranging from 9% to 35% depending on the income subject to the tax.

3.1.2 Transfer Pricing Provisions

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

- (i) a related company located abroad, or
- (ii) a non-related company located in a low tax jurisdiction,



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

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

3.1.3 *Foreign Exchange Gains and Losses*

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

3.2 **Withholding Tax on Non-Residents**

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

There are different effective rates of withholding tax upon payments to non-residents. 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 a party to tax treaties which impose ceilings on withholdings of certain taxable income, which may reduce the rates of the withholding tax.

3.3 **Tax Exemptions for Foreign Entities**

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

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

Decree No. 2,284/91, ratified by Law No. 24,307, exempts from tax, income or gains obtained by foreign individuals and entities from the sale, exchange, swap, or disposal of shares, bonds, and any other kind of security. In these cases, the above-mentioned ITL certificate is not required.

3.4 **Tax on Presumed Minimum Income**

This tax applies to all assets of Argentine companies and other entities, such as Argentine trusts (*fideicomisos*) organized under Law No. 24,441; common investment funds; and permanent establishments of foreign entities and individuals in Argentina.

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



Normal corporate income tax is allowed as a payment on account of this tax.

3.5 Value Added Tax (VAT)

This tax is regulated by Law No. 20,631 and applies to the sale of goods, the provision of services and the importation of goods.

Under certain circumstances, services rendered outside Argentina which are effectively used or exploited in Argentina, are deemed rendered in Argentina and are therefore subject to VAT.

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

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

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

3.6 Turnover Tax (Tax on Gross Income)

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

3.7 Stamp Tax

Stamp tax is a local tax levied on public or private instruments, executed in Argentina or, if executed abroad, when 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.

3.8 Personal Assets Tax

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

In general, the tax applies when the value of the assets owned by the tax payer as of December 31 of each relevant fiscal year exceeds A\$305.000. Depending on the value of the total assets, tax rates vary from 0,5% to 1,25%. Non resident individuals are subject to a fixed rate of 1,25%.

The tax applicable on shares and other equity participations in local companies is paid by the local company itself. The applicable rate is 0,5% on the net worth value of the company.

Certain conventions for the avoidance of double taxation may render this tax inapplicable in certain cases.



3.9 Tax on Credits and Debits in Bank Accounts

This tax is levied upon debits and credits in bank accounts and upon other transactions which, due to their special nature and characteristics, are similar or could be used in substitution for a checking account, such as payments on behalf of or in the name of third parties, procedures for the collection of securities (*valores*) or documents, drafts and transfers of funds made by any means, when these transactions are performed by entities regulated by the Financial Entities Law No. 21,526 of February 1977. 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 organised systems of payment in substitution for checking accounts. The tax law and its regulations provide several exemptions to this tax.

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

3.10 Tax Treaties

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



4. Protection of Intellectual Property

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

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

4.1 Trademarks and Trade Names

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

The duration of a trademark registration is ten years, renewable indefinitely for periods of ten years provided the trademark has been used in connection with the sale of a product, the rendering of a service or as a tradename, during the five year period preceding each expiry date.

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

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

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

4.2 Patents - Utility Models

4.2.1 *Patents*

Patents and Utility Models in Argentina are governed by Law No. 24,481, as amended, and Decree No. 260 of 20 March 1996 (the "Patent Law").

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

The Patent Law provides that patents will be granted for any invention that complies with the requirements of novelty, inventive step and capability of 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 recognised priority, is not a bar to obtaining a valid patent. Patents are granted for 20 years as from the date of application.

The owner of a patent granted in Argentina has the right to prevent third parties from carrying out without his/her consent acts of manufacture, use, offer for sale, sale, or importation within the territory, of the product which is the subject matter of the patent. The protection for process patents covers the act of using the process, and also the acts of using, offering for sale, selling, or importing the product obtained directly by that process.

Patent applications may be filed in the name of an individual or a company. A foreign individual or legal entity must establish a legal address within Argentine territory.

Patents and Utility Models may be assigned and licensed, in whole or in part. The assignment must be recorded at the National Institute of Industrial Property 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.

4.2.2 *Pharmaceutical Patents*

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

4.2.3 *Preliminary Injunctions*

A patent holder may apply for an injunction based on the TRIPS Agreement, the Argentine Code of Civil Procedure and the Argentine Patent Law N° 24,481.

4.2.4 *Other Remedies*

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

4.2.5 *Utility Models*

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

4.3 **Industrial Designs and Models**

Industrial models or design registrations are granted to protect the appearance or shape of an industrial product and which provide an ornamental character to it. Applications may be filed in the name of an individual or a company. A foreign individual or legal entity must establish a legal domicile in the City of Buenos Aires.



A single registration may cover up to fifty different examples of a single model or design, provided that all of them are homogeneous.

In the absence of prior publication or use in Argentina or abroad, a valid registration may be obtained for a term of five years, renewable for two further terms of five years each. Renewals must be applied for not later than six months prior to the expiry of the respective period.

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

4.4 Domain names

There is no legislation in Argentina dealing specifically with domain names registered under "ccTLD.ar". However, there are administrative resolutions passed by the Argentine government that regulate domain name registration procedure in Argentina.

The registrant must complete a form including personal information, and declare under oath that the information included in the form is accurate, that the registration of the domain name does not violate any third party rights, and that the registration is not made for an illegal purpose. The rules allow the Registry to reject applications or revoke registrations in certain cases.

The legal status of domain names in Argentina is not settled yet: some authors assimilate it to a tradename or trademark while others consider it a *sui generis* right. The Argentine Courts, which have awarded injunctive relief in favour of trademark holders and against domain name holders, have avoided the issue. Registration confers the exclusive right of use to the proprietor. Domain names may be subject to dealings such as assignment, liens, and the like.

4.5 Copyright

Protection of copyright in Argentina is based on the constitutional principle set out in Article 17 of the Argentine Constitution. However, copyright matters in Argentina are specifically governed by Law No. 11,723 of 26 September 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 materialised in a tangible form)
- (iv) drawings, paintings and sculptural works;
- (v) architectural, artistic or scientific works;
- (vi) maps, plans and other printed matter;
- (vii) plastic works, photographs, engravings and phonograms;



- (viii) titles and characters as an integral part of a work;
- (ix) works of applied art;
- (x) computer software and databases; and
- (xi) derivative works, new versions, compilations, and translations.

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

In order 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 is a national of a country recognising copyright).

4.5.1 *Computer Software*

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

The amendment confirms the established legal principle that copyright protection is granted to the expression of ideas, procedures, operational methods and concepts, but not to the ideas, procedures or methods themselves.

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

4.6 **Trademark, Patent, Know How Licensing Agreements and other Technology Transfer Agreements**

Trademark licensing and technology transfer agreements executed by an Argentine resident as licensee and a non-resident as licensor, fall under the provisions of Law No. 22,426, as amended. Regulatory Decree No. 580/81 defines technology as any patent, industrial model or design, and/or any other technical knowledge necessary for the manufacturing of products or the rendering of services.

Prior administrative approval of any technology transfer agreements executed between local entities and their foreign controller companies is no longer required under Argentine law. However, all agreements have to be registered for statistical purposes with the INPI (*Instituto Nacional de Propiedad Industrial* – "Institute of Industrial Property") whether executed by controlled companies or by non-controlled ones. If the agreement is not registered, it is nevertheless valid, but certain tax benefits are not applicable.



5. Distribution and Agency Agreements

5.1 Distribution Agreements

There are no statutory rules specifically governing distribution agreements under Argentine law. However, the courts have developed an important body of case law applying general principles of law. Case law, therefore, basically provides guidelines in respect of the general principles to be applied in this area.

A distribution agreement is an agreement pursuant to which a person or legal entity (the distributor) purchases goods in its own name, and for its account, from a manufacturer or wholesaler in order to sell them to third parties for a profit. The distributor's profit results from the difference between the price paid by the distributor to the manufacturer and that charged by the distributor to third parties. Prices may be fixed in different ways, without altering the nature of the relationship.

In contracts with no fixed term, the parties are not entitled to an indefinite relationship; thus, either party may terminate the contract at its discretion without being required to pay compensation to the other, as long as adequate or "reasonable" prior notice of such termination has been given by the terminating party. Failure to give adequate or reasonable notice will entitle the other party to claim damages suffered due to an abrupt and unreasonable termination.

5.2 Agency Agreements

Like distribution agreements, agency agreements are not expressly regulated by Argentine law and therefore case law basically provides guidelines in respect of the general principles to be applied in this area.

The basic difference between an agency and a distribution relationship is that the agent does not purchase goods for re-sale but only promotes the sale of such goods on behalf of the principal.

As far as termination is concerned, the Argentine courts apply similar principles in respect of their termination as those applicable to distribution agreements. Therefore, where there is no specific agreed term, either party may terminate a distribution agreement, without paying an indemnity to the other, provided notice of such termination is given to the other party with reasonable anticipation.



6. Consumer Protection and Antitrust Legislation

6.1 General Protective Provisions for Consumers

Prior to 1993, there was no specific consumer protection legislation. The only possible remedies or protection available to consumers lay in the general provisions of the Civil Code, the fair trade laws and antitrust legislation. The Civil Code provides that agreements must be drafted, interpreted and performed in good faith and that an abusive exercise of contractual or legal rights will not be enforced. Furthermore, the Civil Code provides that vendors may be liable in certain cases for defects in goods sold and imposes strict liability on owners or custodians of potentially harmful materials or products (including consumer goods).

Consumers are further protected by the fair trade laws which establish rules for the labelling and advertisement of products. Lastly, in principle, antitrust laws make provision for protecting consumers from the abuses of market manipulation and anti-competitive behaviour.

6.2 The 1993 Consumer Protection Law

In 1993, the Argentine Congress enacted the first consumer protection law, which was amended in 2008 (the "CPL"). The relevant authorities enforce the CPL by reviewing consumer contracts, and imposing penalties and indemnities for direct damages in the event of violations.

The CPL protects consumers throughout the different contractual phases from negotiation to the delivery and performance of goods (including used goods) and services. Traders must provide consumers with true, detailed and accurate information about the goods or services offered. Consumers are vested with the right to commence individual actions in the event their CPL rights are threatened. The CPL also includes the right to initiate collective proceedings (class actions), which may include patrimonial claims, through consumer associations, and specific proceedings aimed at resolving disputes affecting consumers. Claims initiated by consumers and consumer associations may include punitive damages. Trials are cost free for consumers and consumer associations. The statute of limitations for any claim is 3 years, unless any other applicable law provides a more favourable term to the consumer.

If a consumer suffers damages as a result of defective goods or services, the producer, manufacturer, distributor, trader or the person who provides the product or service will be jointly liable for such damage, unless they can show that the damage is not attributable to them.

6.3 Antitrust Laws

6.3.1 *Argentine Antitrust Law*

In 1994, when the Argentine Constitution was amended, protection against competition involving any kind of market distortion, and control of natural and legal monopolies were included as a constitutional right.



In September 1999 the Argentine Congress modified the former antitrust law, by means of Law No. 25,156 and Decree No. 1019/99 the provisions of which took effect on 28 September 1999 (together referred to as the "Antitrust Law").

6.3.2 *Scope*

Article 1 of the Antitrust Law prohibits certain acts or conduct relating to the production and exchange of goods and services if they limit, restrict, falsify or distort competition, or if they constitute an abuse of a dominant position in a market, and provided that in both cases, they may cause harm to the general economic interest.

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

6.3.3 *Description of Prohibited Practices*

Article 2 of the Antitrust Law lists a series of acts considered as restrictive practices, provided that the other requirements established in Article 1 of the Antitrust Law are also met.

6.3.4 *Dominant Position*

For the purposes of the Antitrust Law, the term "dominant position" includes situations where one or more than one persons are the only offerors or demanding parties of a specific product within the Argentine market or in one or more regions of the world; or even if they are not the only offerors or demanding parties in any of those markets, such persons are not subject to substantial competition; or through a vertical or horizontal integration, such persons are in a position to harm the economic viability of a competitor in the market.

6.3.5 *Cartel prosecutions*

According to the interpretation of the Antitrust Tribunal, the existence of cartels is defined by the presence of competitors of the same relevant market that make arrangements in order to fix prices or production quotas, or to distribute market shares, with the sole purpose of restricting competition.

6.3.6 *Economic Concentrations (Mergers and Acquisitions) - Prior Administrative Control*

The Antitrust Law provides that certain transactions resulting in economic concentrations ("*concentraciones económicas*") require the prior approval of the Tribunal for the Defence of Competition¹ (please see paragraph 6.3.8 below). Transactions requiring such approval are those resulting in the assumption of control of one or more companies by means of any of the following acts:

- (i) mergers;
- (ii) transfer of businesses;
- (iii) acquisitions of any shares or any other rights that grant to the acquirer control of, or a substantial influence over the issuer; and

¹ This role is at present being fulfilled by the existing Commission for the Defense of Competition ("the Antitrust Commission") pending the setting up and regulation of the (new) Tribunal for the Defense of Competition pursuant to the provisions of the Antitrust Law.



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

The requirement for approval of the Tribunal applies where the relevant group of companies involved has a "volume of business"² in Argentina of over A\$ 200 millions.

The Tribunal may decide whether to (i) approve the transaction unconditionally, (ii) approve the transaction but impose conditions; or (iii) reject the transaction.

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

6.3.7 Transactions Exempt from the Notice Requirement

Certain transactions have been exempted from the requirement to obtain approval from the Tribunal.

6.3.8 Procedure

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

6.3.9 Penalties and Sanctions

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

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



7. Labour and Immigration Laws

7.1 Labour Laws

Employer-employee relations in Argentina are mainly governed by 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 upon a monthly, daily or hourly basis, depending on the type of work performed by the employee. There is a mandatory minimum wage per month. By law, employees are entitled to an annual bonus (*"aguinaldo"*) paid in two installments, in June and December each year, equivalent to 50% of the highest monthly wage received during the previous six month period. Typically, the standard working week is from 40 to 48 hours, with an average of 8 hours per day. Workers earn overtime pay for work performed in excess of the standard working week. The rates of overtime pay are 150% of the base rate on normal work days and 200% of the base rate on Saturday afternoons, Sundays and official holidays.

7.3 Contributions and Withholdings

Pursuant to Argentine law, employers and employees have certain obligations to make social security contributions for family allowances, medical services and pension and unemployment benefits. In addition, pursuant to many collective bargaining agreements, union dues of 1% to 2.5% may be withheld from employees' salaries.

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

7.4 Vacations and other Leaves of Absence

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

Female employees enjoy certain additional rights, the most notable of which are special leaves of absence for maternity of 45 days before and 45 days after childbirth. Furthermore, during maternity leaves, employees are entitled to certain family allowances and other fringe benefits.

In the event of an inability to work due to illness or accidents which are not related to work, employees are entitled to their full salaries for a period which may vary from 3 to 12 months, depending on length of service and the existence of a dependent family.



7.5 Trial-Period Hiring

Employment contracts may be for an indefinite period or for a fixed term. In indefinite period contracts, the first three months are a trial period. During the trial period, either party may terminate the labor relationship at any time without the employer having an obligation to make a severance payment. However, the terminating party is obliged to give a fifteen day's prior notice.

7.6 Termination of Labour Contracts

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

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

Furthermore, the employer is required to make severance payments to the employee based on the employee's highest ordinary monthly salary earned during the previous year of employment or full term of service, if shorter than one year. With certain limits the employer must pay to the employee one month's salary for each year of employment or period worked in excess of three months for which the employee worked for such employer. In any event, the severance payment cannot be lower than once the ordinary highest monthly salary.

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

7.7 Work Risk Insurers ("ART")

In 1996, Argentine law established a system to reduce workplace risks and to indemnify employees who become ill or injured at work. Pursuant to Law No. 24,557 (LRT), all workers employed in the private sector (as well as certain other employees) are generally protected by its provisions. Employers of workers included within the scope of the LRT must either self insure against the obligations imposed by the LRT or must be insured by a Work Risk Insurer (*Aseguradora de Riesgos del Trabajo* or "*ART*"). At present, very few companies provide self-insurance for their workers. When an ART provides coverage, it must compensate the injured worker in accordance with the requirements of the LRT, and must also provide medical and pharmaceutical attention, prosthesis and orthopedics, rehabilitation, occupational re-classification, and funeral service benefits.

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

Notwithstanding the limitations of liability provided for in the LRT, court decisions have upheld that such limitations of liability are unconstitutional in certain cases.



7.8 Immigration Controls

7.8.1 *Foreign Workers*

In Argentina, citizens of most countries are not required to obtain a visa to enter the country for up to 3 (three) months.

The foreign person wishing to reside and work in Argentina must obtain a residence permit from the Argentine Immigration Board. There are 2 (two) categories of resident: (i) a permanent resident; and a (ii) non-permanent resident.

In principle, permanent and non-permanent residence permits must be obtained by filling an application at the nearest Argentine consulate in the country of origin. The request for a permanent or non-permanent residence permit must be preceded by the issuance of an entry permit by the Argentine Immigration Board. The request for this permit may be filed with the Immigration Board directly by the foreigner or, alternatively, through a third party on behalf of the applicant.

7.8.2 *Permanent Residence*

A permanent residence permit grants to a foreigner the right to reside and work in Argentina indefinitely. A non-Argentine citizen may apply for a permanent residence where he/she is related to an Argentine citizen (wife or husband, son or daughter or parent). A non-Argentine citizen may also obtain permanent residence in the country after having extended the temporary residence for some time. Documentation such as a certificate that the applicant has no criminal record and birth and marriage certificates will be required.

7.8.3 *Temporary Residence*

A permit for non-permanent residence is granted to foreigners wishing to enter the country for a limited period of time. There are different categories for which foreigners may apply. To apply for a temporary residence permit in order to work in the country the applicant and his or her family must provide certain personal data and documents. In addition, the company for which the applicant will work must provide additional corporate information, and the applicant and the employer must enter into an employment contract that contains certain required clauses regarding term and visa requirements. The applicant should also file personal documentation such as birth and marriage certificates and a certificate showing he/she has no criminal record.

The authorization may be granted for a period of up to 1 (one) year and may be renewed for an equal period.

7.8.4 *MERCOSUR Nationals*

The process for obtaining a temporary or permanent residence in Argentina varies considerably for those citizens born in the following countries: Brazil, Bolivia, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela. Citizens from these countries may apply for an initial two-year temporary residence.



8. Environmental Laws

8.1 Introduction

The enactment of Articles 41 and 43 of the Argentine Constitution, as amended in 1994, as well as new federal and provincial legislation, have strengthened the legal framework dealing with damage to the environment. Legislative and government agencies have become more vigilant in enforcing the laws and regulations regarding the environment, increasing sanctions for environmental violations.

Under the amended Articles 41 and 43 of the Constitution, all Argentine inhabitants have both the right to an undamaged environment and a duty to protect it. The primary obligation of any person held liable for environmental damage is to rectify the damage according to and within the scope of the applicable law. The federal government sets minimum standards for the protection of the environment and the provinces and municipalities establish specific standards and implementing regulations.

The following paragraphs refer to the main Argentine federal legislation which deals with the protection of the environment. It is worth mentioning, however, that the Province of Buenos Aires, where most of the industries in Argentina are located, as well as other provinces, have also enacted environmental laws.

8.2 Environmental General Law

More than eight years after the amendment of the Constitution, making use of the constitutional mandate to set minimum standards for the protection of the environment, in November 2002 Congress passed Law No. 25,675 on "National Environmental Policy" ("Law No. 25,675").

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

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

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

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



8.3 Industrial Waste

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

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

8.4 Hazardous Waste

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

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

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

8.5 Air Pollution

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

8.6 Water Pollution

No specific national legislation on liquid effluents has been enacted. However, in the provinces, the City of Buenos Aires and certain municipalities, there are regulations which prohibit industrial establishments from commencing activities or expanding existing facilities, even on a provisional basis, if such action would result in the discharge of waste into water courses and if the facilities do not satisfy the requirements provided in the regulations.

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



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

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

8.7 Polychlorinated Biphenyls (PCBs)

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

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

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

8.8 The Native Woods Protection Law

In 2007, the Federal Congress enacted Law No. 26,331 for the protection of native woods that are subject to federal jurisdiction. The provinces must provide their own specific legislation with equal or higher standards than those provided at the federal level.

According to this law, native woods are classified in three categories: red, yellow and green. While clearing of native woods of the red and yellow categories is forbidden, those in the green category can be the object of sustainable use if they comply with a "Plan to Approve Change of Use of the Soil" which must be approved by each province. Certain native goods of the yellow category can be classified for these purposes as of the green category.

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

8.9 Criminal Code

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



8.10 General Rules of Tort Law

According to the Argentine Civil Code, an injured party may recover damages from the owner or custodian of an asset that produces environmental damage. In addition, a transferor of an asset which has a hidden defect and later causes environmental damage may be liable after the transfer. In the event of damages caused by several parties (e.g., several industries polluting the same river), liability may be joint and several.

Under the General Environmental Law, in the case of collective environmental damages caused by legal entities, tort liability can be extended to their managers, directors, statutory auditors and/or other officers who participate in the company's decision making process depending upon their level of participation.

8.11 Local and multi-jurisdictional Authorities – Increasing controls

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

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

8.12 Other Regulations

Specific federal, provincial and municipal environmental regulations exist for numerous industrial activities and industries such as oil and gas, mining, food, medical waste disposal and the transportation of radioactive material.



9. Foreign / International Aspects

9.1 The Foreign Trade Regime

9.1.1 *Mercosur*

On 26 March 1991, Brazil, Argentina, Paraguay and Uruguay signed a treaty (the Mercosur Treaty) in Asunción, Paraguay, in order to create a single market between the four countries with a common external tariff. Mercosur represents a total population of approximately 200 million individuals, living in an area covering more than 12 million square kilometres.

The objectives of the Mercosur Treaty are:

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

To date, Mercosur has achieved a free trade zone with respect to most products. There are products, however, that are considered "sensitive" and consequently excluded, which are still subject to tariffs, which are being reduced each year (such as sugar, automobiles and capital assets). It is expected that they will gradually be included among all other products covered by the TEC by the year 2009.

9.1.1.1 *Additional Mercosur Agreements*

Chile and Venezuela have entered into complementary agreements for their partial or total integration into the Mercosur.

9.1.2 *Customs Regulations*

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

Pursuant to Argentine customs regulations, most goods may be freely imported into Argentina, subject to the prior payment of duties.

No import duty is payable in the case of goods originating from a Mercosur member state. However, in order that the import of products from these member states may be exempted from customs duties, they must meet the requirements as to origin.



There are restrictions on the importation of certain goods, for example, quotas on the quantity of motor vehicles imported and a requirement that fresh food, chemicals, pharmaceutical goods, cosmetics and cleaning products be authorised by the relevant Argentine governmental authority before entering the country.

Since March 2002, the Argentine Government has resolved to impose duties on the exportation of goods. Resolution No. 11/2002 issued by the Ministry of Economy, published in the Official Gazette on 5 March, 2002, as amended, levies export duties on the exportation of all types of goods.

9.1.3 *GATT/WTO*

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

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

9.1.3.1 *Antidumping 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 internal market. The comparison between the "export price" and the "comparable price" must be made at the same stage in the distribution process, normally at the post-factory level.

In order to impose antidumping duties, it is necessary to prove both the existence of the dumping and injury to the "domestic industry" caused by the product supposedly being dumped. For the purposes of this law, the term "domestic industry" refers to domestic producers as a whole or to those whose collective output constitutes more than 50% of the total production of such product. Antidumping duties are only applied when dumping causes, or threatens to cause, material injury to a domestic industry, or material delay to the establishment of such an industry.

9.1.3.2 *Safeguard Measures*

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

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

9.2 **International Treaties**

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



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

9.3 Choice of Law and Jurisdiction

9.3.1 Choice of Law

Argentine law generally permits parties to a contract to select the laws that will govern their agreements as long as there exists some connection to the system of law that is chosen. Further, the choice of foreign law will only be valid to the extent that it does not contravene Argentine international public policy (*orden público or order public*). Typical public policy laws include criminal, tax, labour and bankruptcy laws.

Rights associated with real estate (such as *in rem* rights), the ability to acquire real estate and the formal requirements with regard to legal acts connected with real estate are all governed exclusively by local laws. The same principles apply with respect to movable property permanently located in Argentina.

9.3.2 Choice of Jurisdiction

Argentine Courts have jurisdiction whenever (i) the defendant is domiciled in Argentina, (ii) the place for performance of any of the obligations is located in Argentina, or (iii) Argentine courts have been chosen as the applicable forum (subject to certain restrictions). Argentine courts are vested with exclusive jurisdiction to hear all insolvency proceedings relating to debtors domiciled in Argentina. With respect to debtors domiciled abroad, local courts have jurisdiction only to the extent that the debtor has assets in Argentina, in which case an insolvency proceeding will only cover such assets.

Argentine courts acknowledge that parties to a contract may choose a jurisdiction other than Argentina for the settlement of any disputes arising under a contract provided that there is a connection with such jurisdiction and the dispute relates to pecuniary rights.

Lastly, the Argentine Constitution guarantees non-Argentine citizens the same rights as Argentine citizens, including unlimited access to Argentine courts for the resolution of legal disputes, subject, however, to non-residents having to post a bond, if required.

9.4 Enforcement of Foreign Judgements

If an international treaty for the enforcement of foreign judgements exists between a foreign country and Argentina, the rules of such treaty will prevail. In the absence of such a treaty, the National Code of Civil and Commercial Procedure (the "CPCC") will be applicable³ if the defendant is domiciled in the City of Buenos Aires or if the matter at issue will be debated before a federal court. Provincial procedure rules will be applicable where the matter at issue is to be debated before a provincial court. Unless otherwise stated herein, this analysis of the recognition of foreign judgements concerns federal procedure rules (*i.e.*, the CPCC) which are, in principle, applicable when a foreigner is involved.

³ Until the issues raised by the new Charter for the Autonomous City of Buenos Aires have been resolved.



9.4.1 Requirements

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

- I. the judgement must have been issued by a court considered competent by the Argentine conflict of laws principles regarding jurisdiction, have been final in the jurisdiction where it was rendered and resulted from a personal action or an *in rem* action concerning movable assets; if the judgement resulted from an *in rem* action, personal property in dispute must have been transferred to Argentina during or after the prosecution of the foreign action;
- II. the defendant against whom enforcement of the judgement is sought must have been duly served with a summons and, in accordance with due process of law, given an opportunity to defend itself against the foreign action;
- III. the judgement must have been valid in the jurisdiction where it was rendered and its authenticity established in accordance with the requirements of Argentine law;
- IV. the judgement must not violate any principles of public policy of Argentine law;
- V. the judgement must not be in conflict with a prior or simultaneous judgement of an Argentine court; and
- VI. reciprocity is not required for an Argentine court to recognise a foreign judgement.

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

9.4.2 Procedures Relating to Enforcement

To enforce a foreign judgement in Argentina, a notarised copy of the decision must be filed with the Argentine court and the petitioner must file a statement evidencing that each of the conditions required by law has been fulfilled. In addition, all documents (which must be originals or notarised copies) submitted to the court must be authenticated by the Argentine consulate with jurisdiction over the country where the documents were issued. If the relevant country has ratified the 1961 The Hague Convention on the Abolition of Legalisation of Documents, the authentication by the Argentine consulate may be substituted by the Apostille provided for in the aforementioned Convention. All documents in a language other than Spanish must be translated into Spanish by a translator registered in Argentina to be admitted by a local court.

The amounts expressed in foreign judgements need not be converted to local currency.

9.4.3 Immunity

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



9.4.4 Arbitration

Foreign arbitral awards are recognised in Argentina but are subject to the same requirements applicable to the recognition of foreign judgements. If these requirements are met, an Argentine court will accept arbitral awards (either at law or in equity) rendered outside Argentina. Argentina also became a party in 1988 to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (The New York Convention) and is bound by its provisions.



10. Security Interests

10.1 General

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

10.2 Mortgages

Under Argentine law, a mortgage may be established over real estate, ships and aircraft. A mortgage will generally secure the principal amount, accrued interest, and other related expenses owed by a debtor to the creditor. All mortgages must be registered in the relevant registry in order to become effective *vis-à-vis* third parties. Mortgaged property may remain in the possession of the mortgagor (*i.e.*, its owner).

10.2.1 *Mortgages over Real Estate*

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

10.2.1.1 *Assignment of Mortgages*

In general, Argentine law requires that a debtor be given notice of assignment for an assignment to be effective *vis-à-vis* the debtor and third parties. Such notice must be given to the debtor by public means (*acto público*), typically through a notary public.

10.2.1.2 *Priorities*

By operation of law, mortgages grant the registered mortgagee a first priority right over the underlying real estate as from the date upon which the mortgage is executed before a notary public, provided that the filing for registration is submitted within 45 days as from the date of its execution. This first priority right includes principal, interest, costs and other ancillary amounts secured by the mortgage.

The holder of a first degree mortgage over real property will be given priority over any and all other credits subsequently secured by a mortgage over the same property except for a few exceptions. Priority is given according to the chronological order in which each mortgage is registered.

10.2.1.3 *Foreclosure*

Foreclosure of a mortgage is effected through a special summary proceeding which provides for the sale of the property through a public auction. Foreclosure may be conducted by out-of-court proceedings under certain conditions.



10.2.2 *Mortgages over Ships*

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

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

10.2.3 *Mortgages over Aircraft*

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

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

10.3 Pledges

10.3.1 *General*

As a general rule, in order to perfect a pledge over a movable asset, the pledged asset shall be delivered to the creditor or placed in the custody of a third party. The Civil Code further provides that upon default under the secured debt, the creditor may sell the pledged asset through a court auction and, in principle, may not obtain ownership of the asset. The creditor who has a pledge over an asset has a priority right to the proceeds from sale of the asset.

The Commercial Code governs "commercial pledges" which are defined as pledges of chattels to be used as collateral for commercial obligations. The main difference between a civil and a commercial pledge is that in a commercial pledge some creditors (*i.e.*, banks) are entitled to a private sale (*i.e.*, an out-of-court foreclosure). The Commercial Code provides that unless the debtor and creditor agree upon a special sale proceeding, the pledged asset must be sold by public auction, duly announced in the Official Gazette, ten days before the auction takes place.

10.3.2 *Registered Pledges*

Decree-Law No. 15,348/46, of 28 May 1946 (as ratified by Law No. 12,962 and as further amended), provides for the creation of pledges where the asset pledged may remain in the possession of the pledgor. This results in the creation of the "registered pledge", which includes the "fixed pledge" and the "floating pledge". Fixed pledges affect only the relevant registered assets while floating pledges affect the original pledged goods and goods derived from their transformation or replacement. The amount of the pledge is limited to the amount of the secured obligation (including, without limitation, interest and other ancillary amounts).

Registered pledges do not require a public deed in order to be established. They may be established through an authenticated private instrument, using the forms provided by the Registry of Pledges, and must be filed with the Registry of Pledges. Fixed pledges are under the jurisdiction of the Registry of Pledges where the



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

10.3.3 *Foreclosure*

Pledge certificates, which are delivered by the relevant public registry, grant the right to initiate summary enforcement proceedings. Claims should be filed, at the option of the creditor, in the jurisdiction where payment was agreed, where the goods are located, or where the debtor is domiciled.

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

10.3.4 *Pledges of Shares*

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

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

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

10.4 **Security Assignments and Trusts**

Security may also be obtained by means of security assignments and trusts. Trusts also constitute a means of providing security, since the relevant assets may be placed in trust with a trustee who holds them as a separate estate which is not subject to bankruptcy proceedings of either the settlor, the trustee or the beneficiaries.

Alternatively, credits may be assigned as a security in favor of creditors. One of the main differences with a trust is that in a security assignment the assigned assets are typically limited to rights or credits including, without limitation, receivables. In the case of trusts, however, there is no such limitation, and they may be used as vehicles for taking security over most forms of movable and real estate assets.



11. Insolvency and Bankruptcy

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

The general provisions of the Bankruptcy Law apply to both legal entities and individuals (including, without limitation, business organisations in which the government is a shareholder). There are, however, certain exceptions in the case of financial institutions and some differences with respect to public utilities, pension funds and insurance companies. Lastly, some types of organisation (such as banks) remain excluded from the scope of the Bankruptcy Law.

11.1 Out-of-court Agreement

A debtor in a situation of suspension of payments or with economic or financial difficulties of a general nature, may reach an agreement with its creditors and submit it for judicial homologation.

The parties may draft the agreements with such content as deemed advisable according to their interests, and they shall be binding on them even if legal homologation is not obtained, unless otherwise expressly agreed.

For the homologation of the agreement, the debtor must submit the following to the relevant judge: different documents duly authenticated by a certified public accountant, regarding the statement of assets and liabilities; a list of creditors; a list of actions and administrative litigation in process or with an unenforced judgment; a precise enumeration of the commercial and other books held by the debtor; the amount of principal represented by the creditors who have signed the agreement; and the percentage this represents with respect to all the debtor's registered creditors.

In order to request legal homologation it is necessary that the agreement be executed by an absolute majority of unsecured creditors, representing two thirds of the total unsecured liabilities. Once the agreement is approved by the relevant court, it is binding on all unsecured creditors, even on those which have not executed the agreement.

11.2 Reorganisation Proceedings

A reorganisation proceeding (*"concurso preventivo"*) may only be commenced voluntarily by an individual or corporate debtor, who must submit proof of its inability to pay its debts as they fall due as well as a probable ability to reorganise.

If the debtor wishes to obtain the benefit of a reorganisation proceeding, it must file an application petitioning the court for relief under the Bankruptcy Law.

The commencement of the reorganisation proceedings effectively stays claims of unsecured creditors against the debtor arising prior to the filing of the petition and interest on unsecured debts ceases to accrue. All stayed pecuniary lawsuits must be transferred to the bankruptcy court with jurisdiction over the reorganisation. However, execution proceedings relating to mortgages and pledges may be initiated or continued in the relevant courts with notice to the bankruptcy court. Such notice requires the filing (*verificación*) of such claims with the trustee.

Once reorganisation begins, the debtor administers its estate under the supervision of the trustee; nonetheless, the debtor must obtain court approval (with prior notice given to the trustee) prior to engaging in



most activities which are deemed to exceed the ordinary course of business as well as certain material transactions. In particular, the debtor is forbidden to enter into transactions for no consideration or which would adversely affect the interests of creditors with claims prior to the reorganisation.

The trustee must write to each creditor listed in the debtor's application, reporting the initiation of the reorganisation proceedings together with certain summary information on the debtor and its respective debt and indicating the address and deadline for creditor filings. Irrespective of such communication, all creditors (including, without limitation, secured creditors) must file evidence of their proof of claims with the trustee, who reviews them (and checks the debtor's books and, if appropriate, those of creditors). There is a nominal fee due in connection with such filings. Both the debtor and any creditor may challenge the filings made by creditors.

Within ten days after the court's decision regarding creditor's filings, the debtor must submit to the trustee, its creditors and the court a proposal for reorganisation, and this proposal may classify creditors according to the amount, security, nature or other reasonable distinguishing features of the credit. It is acceptable to subordinate certain unsecured credits to other unsecured credits. There must, however, be a minimum of at least three categories, namely: secured creditors, general or unsecured creditors and labour creditors. Then the debtor must submit a proposal for payment to the creditors in each category and must obtain the approval of such creditors within 90 days or within any longer term (not to exceed 30 days) determined by the court.

Each class of creditors must accept the proposal, and acceptance requires a majority of consents of creditors in writing within each category representing, in addition, at least two thirds of all unsecured debts (the consent of secured creditors is not required unless the debtor has conditioned its proposal on obtaining such consent or a proposal is made to them, in which case their unanimous approval is required); then, the reorganisation plan becomes effective and the debtor emerges from the reorganisation proceeding. The Court has the power to approve the plan if the majority is not met in one of the categories, subject to compliance with some requisites required by law.

11.3 Salvage Proceedings (Cramdown)

Pursuant to the Bankruptcy Law, under certain conditions, bankruptcy will not necessarily follow if the debtor fails to obtain the necessary approvals for its reorganisation plan.

If the debtor fails to obtain the legal majorities, instead of declaring bankruptcy the Court will open a registry for a 5-day term where any creditor or interested party may register itself in order to be able to file an offer to purchase the equity capital of the company. The law provides no limitation concerning the persons or legal entities legitimated to register. If the 5-day term elapses and no person has requested registration, bankruptcy will follow.

Registered persons/entities are entitled to file their proposals with respect to the same categories of creditors as provided by the debtor, or they may propose new categories of creditors. Within a twenty day period, registered persons have to obtain the agreement of the creditors to their respective plans with the same majorities and proportions as provided for in the *concurso* reorganisation.

The first of the registered persons to evidence before the court that it has obtained the required majorities is awarded the right to purchase the company equity for an amount of not less than the value of the company as assessed by the court. If the corresponding majorities do not accept the proposal submitted by the registered persons in the twenty day period, bankruptcy and liquidation will follow.



11.4 Bankruptcy

A bankruptcy proceeding may be commenced upon the failure of a reorganisation proceeding or failure of any cramdown proceedings and it may also be commenced either, voluntarily, by the debtor or, involuntary, by any of its creditors.

In this last case, any creditor petition requires sufficient evidence that the debtor has not paid his/her obligations as they fall due. The Bankruptcy Law sets out certain acts which may be considered as evidence of insolvency. Within 5 days after the debtor has been served notice of a bankruptcy petition by a creditor, it must show that it is not insolvent; otherwise, the court declares the debtor bankrupt. Unless commenced due to a failed reorganisation, a liquidation proceeding may be converted by the debtor into a reorganisation subject to the debtor complying with the relevant requirements.

Unlike a reorganisation, the debtor is removed from the administration of its assets and a trustee is placed in charge of them to preserve and administer the debtor's property. Since the bankrupt debtor is removed from the administration of its assets, all payments to creditors by the debtor must be made through the court, which also collects all payments which should be made to the debtor. As in the case of a reorganisation, all claims and proceedings against the debtor are automatically stayed as from the date of the order pursuant to which the debtor is adjudged bankrupt.

Typically the court orders the closing down of the debtor's premises, the seizure of its commercial books and papers and the suspension of all its activities. Ordinarily, the trustee will sell the debtor's assets as soon as practicable in order to distribute the proceeds thereof to creditors (in accordance with the priorities established by the Bankruptcy Law); however, in certain exceptional circumstances (such as public utilities or in order to avoid damage to creditors), the court may order that the activities of a bankrupt company be continued under supervision of the trustee.

Creditors (including, without limitation, preferred creditors) must submit their proof of claims for payment (and supporting evidence thereof) to the trustee. As in the case with a reorganisation, there is also a very low nominal fee due in connection with such filings. The trustee must promote the formation of a committee of creditors in order to oversee the liquidation proceedings. Notwithstanding the requirement to file their proof of claims, preferred creditors are entitled to summary execution proceedings over the assets over which they have security.

Certain creditors enjoy a preference or privilege in the distribution of the debtor's assets once the bankruptcy expenses (which have first priority) have been accounted for. This rule may differ for certain debtors such as financial institutions, insurance companies and pension funds. The law establishes two types of preferences: (a) special preferences, which are granted exclusively over certain specific assets of the debtor, and (b) general preferences, which are granted over all the debtor's assets.

Once the assets available to pay creditors and the amounts owed by the debtor to each creditor are determined, the trustee liquidates the assets of the debtor. Liquidation may be carried out either by the sale (i) of the entire business as a going concern, (ii) of the bulk of all assets, or (iii) of the business' assets through auctions upon a piecemeal basis. After the sale is concluded, the trustee prepares its final report, including its proposals for distribution of the proceeds, and notice thereof is given to the creditors (who may object to it). After the objections are decided and the proposal approved, the distribution takes place. Thereafter, once the liquidation has been completed and all distributions to creditors have been made, the bankruptcy proceedings conclude and the debtor will be discharged.



12. Mining

12.1 Introduction

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

As in most Latin American countries, Argentine law is based upon the principle that all mineral deposits are state-owned. Each province or the federal government is considered as the owners of the minerals located within their jurisdictions. However, individuals and legal entities may obtain concessions from such bodies to explore and develop those deposits and may freely dispose of the minerals extracted within the area of the concession. Article 8 of the Mining Code establishes the general principle that *"the right to explore and develop mines and dispose of them as owners is granted to private individuals and companies, in accordance with the provisions of this Code"*.

The Mining Code provides for two basic types of mining concessions: exploration concession and development concession.

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

The law considers development concessions (including the mine and its deposits, as well as the buildings, machinery, vehicles, etc. used in the development of the mine) to be immovable property distinct from the title to the surface land on which they are located. Once the discoverer's rights are incorporated into public deeds and registered with the Registry of Mines, they provide title to the development concession. Development concessions may therefore be sold or transferred as any other real estate property. The transfer document must be notarized and registered with the appropriate administrative mining registry. Mortgages may also be granted over development concessions. Since mineral products are movable assets, once extracted they can be pledged as security for financing purposes.

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

12.2 Classification of Mines

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

First class mines are those in which the following metals are mined: gold, silver, platinum, mercury, copper, iron, lead, tin, zinc, nickel, cobalt, bismuth, manganese, antimony, wolframite, aluminium, beryllium, vanadium, cadmium, tantalum, molybdenum, lithium and potassium. Certain fuels (such as mineral coal, lignite, anthracite coal and solid hydrocarbons) and non-metals (such as arsenic, quartz, feldspar, mica, fluorite, calcareous phosphates, sulphur, borates and precious stones) are also included in this category.

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



Minerals falling into this category may be mined by anyone without having to obtain a concession. The second type includes saltpetre, salines, peat bogs, metals not included in the first class and low-grade aluminous soils, abrasives, ochres, resins, steatite, barium sulphate, low-grade copper ores, graphite, fine white clay, alkaline salts or earthy alkaline salts, amianthus, bentonite, zeolite and permutite or permutitic minerals. The owner of the surface rights has a preferential right to deposits falling within this subdivision, but must have his/her claims officially demarcated.

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

12.3 Exploration of Mineral Resources

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

12.4 Development of Mineral Resources

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

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

12.5 Specific Tax Treatment

Mining activities have special tax incentives which should be carefully analyzed in the decision making process for a new investment in the area.



13. Energy

13.1 The power sector

13.1.1 *Background. From the Regulatory Reform to the Emergency Law*

In 1992, the power sector was reformed, deregulated and privatized both at federal and provincial levels. At the federal level this reform was instrumented by means of Law No. 24,065 and its regulations –Decrees No. 1398/92 and 186/95, and Resolution No. 61/92, among many others- (the “Regulatory Framework”).

The main features of the Regulatory Framework were the following:

- (i) Vertical division of the power sector into four broad categories: generation, transmission, distribution and demand with strict cross ownership restrictions between some of these categories.
- (ii) Introduction of competition in power generation activities with an electricity wholesale market (“MEM”) where large users 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 from privatization).
- (iv) Creation of an autonomous regulatory agency.

The Regulatory Framework was however affected by Law No. 25.561 (the “Emergency Law”), enacted and promulgated on January 6, 2002. Although affected by the law, the Regulatory Framework is still in force.

13.1.2 *Regulatory agencies*

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

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

13.1.3 *The power generation activity. The wholesale market*

The Regulatory Framework allows power generation to be carried out within a competitive market environment. Pursuant to the regulatory framework, hydroelectric generation facilities require that a



concession is granted by the National Executive in order to be built and operated, whereas the operation of thermal power generation plants does not require any specific authorization, other than regular planning, regulatory and environmental clearances.

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

13.1.4 Transmission and distribution activities

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

Tariffs charged by electricity transmission companies include: (a) a connection charge; (b) a transmission capacity charge; and (c) a charge that rewards the actual energy transmitted. Incoming revenues from system expansions are regulated separately. Transmission tariffs are passed through to end customers through distributors.

13.2 The Argentine Oil and Gas Industry and Regulatory Framework - Upstream and downstream sectors

13.2.1 General

Argentina is one of the largest oil producing countries in South America, along with Venezuela, Brazil and Colombia. Oil has historically accounted for the greater part of the country's hydrocarbon production and consumption. The relative share of natural gas increased rapidly during the 90's but has fallen in recent years.

13.2.2 Privatisation and Deregulation

The federal *Ley de Hidrocarburos*, Law No. 17,319 (the "Hydrocarbons Law"), of 1967 and subsequent enacting dispositions regulate the Argentine oil and gas industry. The Secretariat of Energy is the Hydrocarbons Law enforcement agency.

From the 1920s to 1990 both the upstream and downstream segments of the Argentine oil industry were monopolies of the Argentine Government. In 1989, Argentina enacted laws aimed at deregulation of the economy and the privatisation of Argentina's state owned companies.

Deregulation of the oil industry was initiated in 1989 by certain decrees (the "Oil Deregulation Decrees"), which eliminated restrictions on imports and exports of crude oil (subject to the approval of the Secretariat of Energy in the case of exports) and deregulated the domestic oil industry and the prices of oil and petroleum products. They also provided for the free disposition and marketing of all hydrocarbons produced within Argentina.



13.2.3 Transference of hydrocarbons to the provinces

In accordance with the terms of the Privatisation Law, and later on the amendment of the Argentine Constitution in 1994, oil and gas reserves that had been within the Federal domain were transferred to the provinces in whose territories the reserves are located.

This transfer was instrumented in January 2007 through Law No. 26,197 that amended the Hydrocarbons Law. The domain and jurisdiction over all oil and gas fields located in the territories of the provinces and in the territorial sea up to 12 marine miles from the base line were transferred to the provinces in whose territories they are located. The permits and concessions granted by the Federal government in effect at the time Law No. 26,197 was enacted were transferred to the provinces without prejudice to the rights and obligations of their holders.

13.2.4 Exploration and Production

The Hydrocarbons Law establishes the basic legal framework for the current regulation of oil and gas exploration and production in Argentina at the federal level.

Hydrocarbons exploration and production activities are subject to registration requirements established by the Secretariat of Energy. In order to become a holder of an exploration permit or production concession, oil companies must register with the registry of oil companies with the Argentine Secretariat of Energy in Buenos Aires and/or with the corresponding province, as the case may be. Registration in this registry is granted on the basis of meeting certain general financial and technical standards.

A production concession vests in the holder the exclusive right to produce oil and gas from the area covered by the concession for a term of 25 years (plus, in certain cases, a part of the non- expired portion of the underlying exploration permit). This term may be extended for an additional 10 years by application to the Argentine Government.

Holders of production concessions are also required to pay royalties to the government of the province in which production occurs. Permit holders and concessionaires must also pay an annual surface canon to the Federal Government or the provinces (depending on which of them has granted the permit) based on the acreage of the concession or permit, as the case may be.

13.2.5 Transportation of Oil and Gas under the Hydrocarbons Law

The Hydrocarbons Law provides for awards by the Argentine Government of 35-year concessions for the transportation of oil, gas and petroleum products following submission of competitive bids. The term of a transportation concession may be extended for an additional 10-year term upon application to the Argentine Government.

Gas pipelines and distribution systems privatised within the framework of the privatisation of *Gas del Estado* are subject to a different regime under the Natural Gas Law. Pursuant to this law, licenses for providing natural gas transportation and distribution services may be granted.

Decree No. 44/91 defines liquid hydrocarbons pipeline transportation as a public service and expressly establishes that the open access principle applies to such transportation.

13.2.6 Refining

Whether performed by oil producers or third parties, hydrocarbons refining activities are subject to Law No. 13,660 of 1949 and the Oil Deregulation Decrees that provide the basic regulatory framework for these activities in Argentina.



Refining activities are subject to registration requirements established by the Argentine Secretariat of Energy. Since the regulatory power of the Secretariat of Energy is also delegated to the provinces and municipal districts, refining activities must also comply with provincial and municipal safety regulations (technical, safety and quality standards).

13.2.7 Market Regulation

Under the Hydrocarbons Law and the Oil Deregulation Decrees, holders of production concessions having the right to produce oil and gas are allowed to dispose of such production in the market without restriction.

Hydrocarbon producers are also granted by Decree No. 2703/02 the right to dispose freely up to 70% of the foreign currency received for their oil and gas exports, notwithstanding the exchange controls and foreign currency repatriation obligations established within the framework of the emergency declared in January 2002.

Refined products may be sold at market prices. However since 2003, producers and refiners agree with the Government to stabilise crude oil, fuel and gas oil prices for the local market for limited periods.

The Hydrocarbons Law authorises the Argentine Government to regulate the oil and gas markets and to prohibit the export of crude oil during any period in which the Argentine Government finds domestic production to be insufficient to satisfy domestic demand. While natural gas exports are subject to prior approval from the Executive Branch, crude oil can be exported without any prior governmental approval.

13.3 The Argentine Gas Industry and Regulatory Framework - Transportation and distribution

13.3.1 General

Argentina is one of the largest natural gas producers in South America.

The Natural Gas Law and implementing decrees provided for, the privatisation of *Gas del Estado* and the transfer of substantially all its assets to two transportation companies and eight distribution companies. The five main gas pipelines were divided into two systems on a geographical basis (the northern and southern area pipeline systems), designed to give both systems access to gas sources and to the main centres of demand, including the greater Buenos Aires region.

13.3.2 Regulatory Framework

The Natural Gas Law governs the transportation, storage, marketing and distribution of natural gas. Transportation and distribution are defined as public services. Consequently, transportation and distribution licensees are obliged to adopt measures to ensure that the supply of services will not be cut off. Natural gas production is governed by the Hydrocarbons Law.

The regulatory structure for the natural gas industry creates an "open-access" system, under which gas producers, large customers and distributors have open access to available transportation and distribution systems on a non-discriminatory basis. Accordingly, transportation and distribution licensees are obliged to allow free access to third parties to any excess transportation and distribution capacity (not already committed), upon conditions to be agreed by the parties concerned.

Transportation and distribution licensees may not grant nor offer advantages or preferences of access to their systems, except for those that are based upon actual differences, which may be determined by ENARGAS.



Transportation and distribution of natural gas must be carried out by private legal entities duly qualified by the Argentine Government, through the granting of the corresponding concession, license or permit ("Authorisation").

13.3.3 Cross Ownership Restrictions and Limitations

The Natural Gas Law provides for several restrictions on cross ownership of companies participating in different segments of the gas industry. The limitations contained in the Natural Gas Law apply to natural gas producers, distributors, large consumers, transportation companies and marketers.

13.3.4 ENARGAS

The Natural Gas Law created ENARGAS which is an autonomous agency of the Ministry of Economy and Public Works and Services, responsible for the enforcement of the Natural Gas Law.

13.4 Environmental regulations

During recent years, Argentina has adopted regulations providing for the protection of the environment that require hydrocarbon's operations to meet stricter standards that are comparable in many respects with those in force in the United States and in countries within the European Union. These regulations establish the general framework for environmental protection requirements, including fines and criminal penalties for violations, which are more fully described in another section of this booklet.

The provinces are also entitled to issue environmental regulations. Provincial environmental regulations are valid, provided that their standards are equal to or higher than the federal standards. Most of the hydrocarbons producing provinces have issued specific environmental regulations for the oil industry.



14. Telecommunications

14.1 Background. Privatization

In 1990 telecommunications services were privatized by the first Menem Government. To implement the privatization process, the Argentine Government enacted rules both to regulate the bidding process and also to regulate the telecommunications market after privatization (the "Privatization Rules").

The Privatization Rules provided for two companies to be created (Telco North – today, Telecom Argentina S.A. and Telco South – today, Telefónica de Argentina S.A., the "Telcos") which became the licensees for each region to provide basic telephony services (BTS).

The Telcos (in their respective regions) were granted exclusivity or monopolistic rights for an initial 7-year period, which expired in November 1997 ("Exclusivity Period").

14.2 Gradual Deregulation

In 1997, when the Exclusivity Period ended, the Government decided to partially extend the exclusivity and altered some important aspects of the Privatization Rules. It started a gradual deregulation period.

In September 2000, a new set of regulations was approved under Decree No 764/2000 (the "New Regulations") providing for a deregulated legal framework for Argentine telecommunications.

The New Regulations were enacted for the deregulation of BTS and international services after 8 November 2000, opening up the Argentine telecommunications market to free competition, and consisted of four new sets of rules, namely;

- (i) Licensing Rules for Telecommunications Services;
- (ii) Universal Service General Rules;
- (iii) National Interconnection Rules; and
- (iv) Rules of Administration, Management and Control of the Radio Spectrum.

The Universal Service General Rules were replaced under Decree No 558/2008 of April 3, 2008 which approved a new set of Universal Service General Rules (the "Universal Service General Rules").

14.2.1 *Licensing Rules for Telecommunications Services*

There is only one class of license for the rendering of telecommunications services to the public, which authorizes the provision of any telecommunications service, fixed or mobile, wired or wireless, national or international, with or without its own infrastructure. Telecommunications services may, however, only be provided after a license has been granted, in respect of the specific services covered by that license.



There are no restrictions upon foreign investments in the telecommunications market, other than those established by Law No 25,750 (the "Media Ownership Law") of 18 June 2003 for providers of Internet Access Services. Broadcasting service providers may also apply for a Telecommunications Services License. There are no minimum investment requirements.

14.2.2 Universal Service General Rules

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

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

14.2.3 National Interconnection Rules

The New Regulations also contain the new national interconnection rules (the "National Interconnection Rules"), which are applicable to all telecommunications services providers in Argentina.

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

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

The Rules of Administration, Management and Control of the Radio Spectrum provide that the radio spectrum is an intangible, scarce and limited resource which may be administrated exclusively by the Argentine State. Secom will authorize the use of frequency bands to provide telecommunication services through: i) a public bidding processes or auctions, or ii) upon request.

14.3 Satellite Issues

The rules relating to the provision of satellite facilities by geostationary satellites in both the fixed service (FSS) and the broadcasting service (BSS) are contained in a number of resolutions of the Secom, which distinguishes between Argentine and non-Argentine satellites. Argentine satellites are defined as those satellites registered with the International Telecommunications Union (ITU) for which the Argentine Government is the notifying administration. Non-Argentine satellites are those registered with the ITU by an administration which is not the Argentine Government. Owners of satellites receive the same treatment, whether they are public entities or private entities.

A non-Argentine satellite may render band satellite capacity only if certain conditions are met and a reciprocity agreement is signed between Argentina and the administration that has registered the non-Argentine satellite with the ITU.



15. BROADCASTING

15.1 Generalities

As from September 1980, the operation of broadcasting companies in Argentina is governed by Law No 22,285 (the "Broadcasting Law").

The Broadcasting Law defines transmissions of sound or television and similar transmissions, addressed to the public in general and to certain persons as "Broadcasting Services". Closed circuits such as cable TV, Multiple Multi-channel Distribution Services (MMDS), UHF or Direct to Home services ("DTH"), are defined under the Broadcasting Law as "Complementary Services".

Licenses to own and operate a Broadcasting Station with VHF frequency are granted by Presidential Decree after a bidding process has been carried out by the Argentine Federal Broadcasting Committee (*Comité Federal de Radiodifusión*, "COMFER"). Licenses to own and operate Complementary Services are granted by COMFER.

Generally, licenses are granted to Argentine citizens or companies organized in Argentina. Individuals holding a license, or the shareholders of the licensee, as the case may be, must satisfy, during the whole term of the license, *inter alia*, certain conditions, including: (i) be Argentine native or naturalized citizens; (b) be of cultural aptness and have adequate financial capacity; etc.

In addition to conditions imposed on shareholders, the Broadcasting Law provides that (with the exception mentioned below) the licensees may not be affiliates or subsidiaries of, or be controlled or managed by, foreign individuals or companies.

15.2 Bilateral Investment Treaties

In recent years, Argentina has entered into bilateral treaties for the "Protection and Promotion of Foreign Investments" with many countries, including among others, the United States, the United Kingdom, Spain, France, the Netherlands, the Belgian/Luxembourg Economic Association, Germany, Japan, Switzerland, Italy and Poland.

Generally, such treaties provide that each contracting party shall permit and treat investments and activities associated therewith on a basis no less favourable than that accorded in like situations to investments or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is more favourable, subject however to the right of each party to make or maintain exceptions falling within one of the sectors or matters listed in the protocol to the respective treaty.

15.3 The Media Ownership Law

On 18 June 2003 the Argentine Congress enacted the Media Ownership Law, which in principle restricts the participation of foreign investors in "communications media companies" to 30% of the entity's voting capital stock. The Media Ownership Law provides that "communications media companies" include, among others, newspapers, magazines, journals and broadcasting services and complementary broadcasting services under Law No 22,285.

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