

Buenos Aires

BAKER & MCKENZIE

# Acquiring Business in Argentina



2007

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# 1. General framework

## 1.1 Types of companies

Foreign companies are authorized to carry out isolated acts within Argentina and be a party to a litigation procedure without the need to comply with major registration procedures to that effect.

On the contrary, a legal vehicle should be established for purposes of carrying out regular business activities in Argentina on a customary basis. Although Argentine law provides for other types of legal entities (i.e., general partnerships, limited partnerships, etc.) we will focus on the most common forms of organization, which are related to setting up a branch or a subsidiary under the structure of a stock corporation or a limited liability company.

These forms of organizations are subject to different corporate requirements and produce different tax consequences, as explained herein.

### Corporate requirements

**Branch.** By definition, a branch is the same legal entity as the parent company, which has been decentralized for administrative purposes and conducts business in Argentina through a legal representative, who has been granted a power of attorney for that purpose. The branch bears the same corporate name and, from a commercial and financial standpoint, it is directly subordinated to the parent company. Because of the administrative decentralization, the branch must keep its own accounting records (separate from those of the parent company) reflecting operations carried out in Argentina and, thus, prepare its own financial statements and respective tax returns.

Following these basic premises, all activities carried out by the branch will be attributed to the parent company. The parent company shall be liable for the obligations of the branch, notwithstanding the separate accounting referred to above. There is no legal mechanism available to limit the liabilities of the branch as set forth by operation of law.

The branch must be registered with the Public Registry of Commerce (the “PRC”), a governmental agency which controls and supervises compliance with applicable corporate regulations and requirements by the companies under its supervision (i.e., branches and any other company which has been registered with the PRC).

**Stock Corporation.** A stock corporation must have at least two shareholders. (Nominees may be used.) Shareholders are, in principle, not liable for corporate debts and obligations beyond the amount of their capital subscription, unless certain specific circumstances related to fraud arise.

In order to become incorporated in the City of Buenos Aires, the proposed articles of incorporation and by-laws must be filed with the PRC for approval.

A stock corporation must have a minimum corporate capital of twelve thousand pesos, which is not significant. The corporate capital shall be divided into nominative, non-endorsable shares, all of which shall have the same face value and shall grant their holders between one and five votes per share. Preferred shares with respect to dividends or capital redemption may also be issued although such preferred shares may have no voting rights. All shares must be subscribed for upon incorporation or upon increase of corporate capital. Upon incorporation, shareholders must pay in 100% of the contributions in kind and at least 25% (twenty-five percent) of their cash contributions. The remaining cash contributions (i.e., 75%) must be paid in within two years as from the incorporation date, unless the bylaws provide for a shorter term.

Under Argentine law, the administration of a stock corporation is entrusted to a board of directors appointed by the shareholders. Each director may hold office for a maximum term of three consecutive years.

The Board of Directors must meet at least every three months to discuss the ordinary course of the operations of the corporation. Quorum for validly adopting resolutions may not be lower than the absolute majority of its members. Additionally, the absolute majority of the directors must reside in Argentina and all of them, whether or not domiciled in Argentina, must establish a "special domicile" in Argentina.

Shareholders' meetings must be held in Argentina. Shareholders may be represented by proxies. Per conflicts of interest principles, directors, managers, officers and employees are not allowed to represent the shareholders of companies in which they assume such positions. Shareholders' meetings must be called by the board of directors. Depending on the nature of the resolutions to be adopted, they are subject to specific quorum and majority requirements.

An ordinary shareholders' meeting must be held annually to approve the company's financial statements and related issues (i.e., appointment of directors, consideration of their performance and fees, etc.). Extraordinary shareholders' meetings may be held at any time (i.e., for purposes of resolving an amendment to the bylaws, a merger, etc.). Amendments to the bylaws, appointment and resignation of directors, mergers, etc. must be registered with PRC.

Argentine law requires that each foreign company be registered with the PRC in order to become a shareholder of a local corporation or a quota holder of a local limited liability company. To that effect, the foreign company must file certain corporate documents with the PRC (i.e., Articles of Incorporation and Bylaws, a board of directors' resolution in this respect, a power of attorney appointing its legal representatives in Argentina, etc.) for purposes of evidencing his/her existence and good standing under the laws of the country of incorporation.

The bylaws of the stock corporation may provide for one or more statutory auditors (“Statutory Auditors”). Usually the company’s auditors are appointed as “Statutory Auditors”. The Statutory Auditor acts as an internal auditor of the company, who performs internal duties associated with the supervision and control of all acts performed or resolutions made by the board of directors as to the legal requirements, the by-laws and articles of incorporation. If no Statutory Auditors are appointed, the shareholders are granted supervision rights (i.e., to examine corporate books, to request reports from the Board of Directors, among other things).

**Limited Liability Company.** A limited liability company must have at least two quota holders and a maximum of 50. (Nominees may be named). Quota-holders are not, in principle, liable for corporate debts and obligations beyond the amount of their capital subscription, unless certain circumstances related to fraud are met.

In order to become incorporated in the City of Buenos Aires, the incorporators must submit the proposed Articles of Association with the PRC for approval.

The administration of limited liability companies may be entrusted to the management, which may be composed of one or more members, who may be quota holders or not. The managers have the same rights and obligations as those of the directors of stock corporations.

Unlike stock corporations, it is not mandatory for a limited liability company to have a minimum corporate capital. While the capital of stock corporations is divided into shares, the limited liability companies’ capital is represented by quotas, all of which shall have the same face value and shall grant their holder’s one vote per quota. The main difference between quotas and shares is that quotas are not represented in certificates. All quotas must be subscribed for upon incorporation. Quotas are transferred by assignment, while transfers must be registered with the PRC.

Besides holding meetings, quota-holders may also validly adopt resolutions by filing written communications or written statements with the management reflecting the essence of their votes. Any amendment to the articles of association, appointment and resignation of managers, etc., must be registered with the PRC.

Limited liability companies with a capital of less than \$ 2,100,000 have no obligation to file the financial statement with the PRC. On the contrary, limited liability companies which hold a capital of \$2,100,000 or more must comply with said requirement and approve the financial statements in a quota holders’ meeting, which shall be called by the board of managers within the fourth month from the closing date of the fiscal year.

## 1.2 Structure of transaction. Liability of purchaser and seller

The legal framework differs significantly depending on whether the transaction is structured as a merger, a purchase of assets or a purchase of shares/quotas.

**Merger.** Under Argentine law, two or more companies can merge either by consolidation or absorption.

In both cases, the company surviving the merger acquires, as universal successor, all of the assets and liabilities of the companies, that are dissolved without being wound up. As a result thereof, the shareholders of the companies become shareholders of the surviving company in accordance with the share exchange mechanism agreed upon between the merging companies.

The main difference of both merger procedures lies in the nature of the surviving company. While under the merger-consolidation, the merging companies are succeeded by a newly formed company. In the merger-absorption process, an existing company is absorbed by the surviving company.

The steps involved in either procedure may be summarized as follows:

- Execution of a preliminary merger commitment by the directors of the companies involved, which shall include the following information: (i) grounds and purposes of the merger; (ii) merger balance, prepared as from a date not more than three months prior to the preliminary merger commitment; (iii) exchange rate agreed upon by the merging companies, which shall be applied to determine the percentage interest of the shareholders to be incorporated in the surviving company; (iv) proposed amendments of the bylaws, or bylaws provisions of the surviving company; (v) limitations on the management of the business of the merging companies and warranties to comply with ongoing activities on a regular basis until the merger is registered with the PRC.
- Approval of the preliminary merger commitment and the merger balance sheet by the shareholders of the involved companies;
- Publication of relevant information regarding the merger for three days in the Official Gazette and a newspaper of a relatively wide circulation for purposes of providing third parties (i.e., creditors) with the right to oppose the merger until their credits are secured or satisfied;
- After the 15-day term within which to file creditors' objections has expired and within the term of 20 additional days (to levy attachments, provided an objection shall have been filed within the 15-day term), the final merger agreement shall provide for, among other things, (i) the corporate resolutions approving the merger; (ii) a list of the shareholders and creditors who have objected to the merger; (iii) the special balance sheets and the consolidation

balance sheets of the merging companies; and (iv) any other agreements specified in the preliminary merger agreement.

- Registration of the merger with the PRC. The merger becomes enforceable vis-à-vis third parties upon such registration.

**Shares vs. assets. Liability of purchaser and seller.** As discussed below, in certain cases in which the transaction is structured (i) through the incorporation of a new company by the seller (NEWCO) and (ii) the subsequent transfer into such NEWCO of the assets to be purchased (following the procedure of the BTL), a higher degree of protection may be achieved and the contingencies inherent in any asset purchase (by the purchase of the sellers' shares in the target company) may be limited.

The transfer of shares must be notified by the seller to the board of directors of the target company, which must register it in the Share Registry Book and in the respective stock certificate.

The purchase of all or a substantial part of the assets of a company should be regarded as a transfer of an ongoing concern ("*transferencia de fondo de comercio*" or "*bulk transfer*") and not as the purchase of the separate assets compromised within the enterprise.

The bulk transfer is specifically ruled by law No. 11,867. However, please note that those legal provisions are not mandatory, unless buyer wants to be assured that the liabilities of seller transferred to the buyer shall not exceed those declared to buyer by seller. In this regard, the main purpose of the legal procedure is to protect buyer, according to certain restrictions, from seller's hidden and contingent liabilities and to protect seller's creditors in case seller transfers a substantial part of its assets. Pursuant to the provisions of law No. 11,867, the purchase price may not be lower than the reported liabilities.

The bulk transfer should be evidenced in a written agreement between buyer and seller which should be registered with the PRC within certain time restrictions. Seller shall deliver to buyer a signed statement declaring (i) debts, (ii) name and domicile of each creditor, (iii) amount of each credit and (iv) each credit's maturity date, if any. A notice of the bulk transfer must be published in the Official Gazette and in a local newspaper of each jurisdiction where the seller operates. Creditors may oppose the transfer requesting that an amount equivalent to their credits be withheld from the purchase price within 10 days following the last publication. Said withholding must be deposited by buyer for 20 days, during which term the opposing creditors have the right to pursue a court garnishment order of the amounts deposited. Upon the expiration of (i) the term set forth for the creditors, and (ii) the withholding of any such credits, the parties may execute the final purchase document and close the transaction.

## 2. Regulatory issues

### 2.1 Exchange controls and foreign investment restrictions

#### Exchange control issues

There are certain restrictions on foreign exchange market access and on transfer of funds to foreign countries. Therefore, certain exchange transactions are restricted or contingent upon Central Bank's prior approval. Notwithstanding the foregoing, the transfer of dividends established under an approved balance sheet does not require such prior approval.

In general, the financing repayment is subject to a minimum term of 365 days from the cancellation of the loan in the local market. Although there are some exceptions, as a general rule, financing may be subject to a 30% deposit of the loan value.

#### Foreign Investment

Argentine law does not provide for any restriction or prohibition to foreign investments. No prior governmental approval for said investments is necessary other than the authorizations granted to any domestic or foreign investor in a particular business activity (e.g., banking, insurance, etc.).

The main foreign investment provisions are set forth in the "*Ley de Inversiones Extranjeras*" (Foreign Investment Law – i.e., No. 21,382 enacted in 1976) as amended for the purpose of achieving liberalization and deregulation of said investments, by Law No. 23,697 and the regulatory provisions of the Executive Order No. 1,853 enacted in 1993.

Investments may be made in (i) foreign currency; (ii) capital assets; (iii) proceeds of other investments; (iv) proceeds subject to repatriation resulting from other investments made in the country; (v) capitalization of certain foreign credits; (vi) certain intangible assets; and (vii) other forms protected by special legislation.

### 2.2 Competition / Antitrust laws. Previous notice to the authority

#### Introduction

Defense of Competition Law No. 25,156 (the "Law") enacted on September 20, 1999, creates the National Tribunal for the Defense of Competition (the "Tribunal") as the enforcing authority of the Law. The Tribunal is set up as an autonomous administrative body within the Ministry of the Economy and Public Works and Services. The Tribunal, however, has not been set up. Its functions

are currently being performed by the Competition Defense Commission (the “Commission”). Therefore, when we make reference to the Tribunal, it must be understood that its functions are currently being performed by the Commission.

The Law was amended on April 5, 2001, by Executive Order 396/01 (the “EO 396”). EO 396 introduced major changes to the merger control system set forth in the Law. The main purpose of these changes was to substantially reduce the number of transactions subject to the obligation to obtain approval from the Commission. Those changes will be discussed in detail below.

Finally, Executive Order 89/01 (the “EO 89”) has regulated some provisions of the Law related to merger control proceedings. This EO systematizes the administrative practice developed since the Law was enacted.

### Merger Control

1. **Overview.** Section 7 of the Law prohibits any merger that may have as a purpose or effect the limitation or distortion of competition in a way detrimental to national economic interest.
2. **Transactions included. Notification. Approval procedure. Criteria for reportability.** Any merger that meets the definitions of merger under the Law, size of transaction and territorial jurisdiction set forth by the Law must be notified to the Tribunal.

#### 2.1. Definition of Merger

The following transactions are within the scope of the Law: a) mergers of previously independent entities; b) bulk transfers; c) the acquisition of ownership rights in shares or equity interest, or debt, or of any other rights in shares or equity interest that may give the right to the holder to (i) convert them into shares or equity participation, or (ii) have the control, or a significant influence, over the internal decision-making process of the entity that issues them; and d) any other agreement or transaction that (i) may, legally or as a matter of fact, transfer to any entity or economic group the assets of another entity, or (ii) may grant to that entity or economic group the control of, or a significant influence on, the adoption of ordinary or extraordinary business decisions of the entity.

#### 2.2 Size of transaction

Section 8 of the Law, as amended by the EO 396, establishes that any of these transactions must be reported to the authorities when the cumulative annual turnover in Argentina of the parties involved exceeds PESOS 200,000,000. For purposes of this calculation, the annual turnover in Argentina of the acquiring group plus the acquired company/ies must be taken into account.

For purposes of the Law, cumulative business volume means the total gross ordinary sales of goods and services of the new combined entity during its latest fiscal year, less any discount on sales, value-added tax and any other taxes directly related to the business volume.

The cumulative business volume is calculated taking into consideration the sales of:

- a. The acquired entity;
- b. The entities in which the acquired entity has, directly or indirectly: (i) more than one half of the equity, (ii) the power to exercise more than one half of the votes; (iii) the power to appoint more than one half of the members of the Supervisory Committee, the Board of Directors and any other governing body of the entity; or (iv) the right to direct the activities of the entity;
- c. Any entity that enjoys any of the rights listed in **b** with respect to any of the affected entities;
- d. Any entity in which any of the entities listed in **c** has any of the rights listed in **b**;
- e. Any entity in which any of the entities listed in **a** through **d** can exercise any of the rights listed in **b**.

The Commission has clarified the text of the Law by establishing that, for purposes of calculating the cumulative business volume, the turnover of the acquiring group of companies plus the turnover of the target company/ies must be taken into account, explicitly excluding the seller's turnover.

### 2.3 Transactions Exempt from Filing Merger Notice

The following transactions are exempt from filing a merger notice with the Tribunal:

- a. The acquisition of entities in which the buyer has had more than 50% of the equity;
- b. The acquisition of bonds, debentures, shares without voting rights or any other debt security of the entity;
- c. The acquisition of one entity by one foreign group of companies that has had no assets or shares in other Argentine entities;
- d. The acquisition of liquidated companies that did not operate in Argentina during the year prior to the acquisition;

- e. EO 396, furthermore, exempts from notification those transactions which, even though they exceed the PESOS 200,000,000 threshold, have the following characteristics:
- The total value of the assets being transferred in Argentina does not exceed PESOS 20 million; and
  - The total price for the transaction in Argentina does not exceed PESOS 20,000,000;
  - Further provided that the acquiring group has not entered into any other transaction in the previous 12 or 36 months, in the same market, exceeding the total amount of PESOS 20,000,000 or PESOS 60,000,000, respectively.

The Commission has clarified the scope of some of the exemptions listed above by issuing a series of consultative opinions.

For example, in the case of the exemption mentioned in paragraph (a) above (when the buyer holds more than 50% of the equity of the acquired company), the Commission has ruled that when sole control of the company is shared between buyer and seller (for example, in the case of a 60/40 joint venture with a shareholders' agreement granting veto rights over certain strategic matters to the minority shareholder, which happens to be the seller) the acquisition of the company must be notified, even if the buyer owns more than 50% of the shares of the target company; provided that the other criteria set forth by the Law are met. However, this opinion has been subsequently qualified by the Commission resulting in the need to analyze the obligation to be notified in these circumstances on a case-by-case basis.

#### 2.4 Penalties for noncompliance with notification requirements

Fines of up to AR\$1,000,000 per day until the notification is made.

#### 2.5 Period of time within which to file the Notification

The notification to the authorities must be filed:

- a. Before the merger is executed; or
- b. Within one week from the date the agreement is executed; or
- c. Within one week from the date of publication of the purchase offer; or

- d. Within one week from the date of acquisition of a controlling participation, whichever occurs first;

## 3. Public company's takeover

The Argentine legal framework regarding securities basically consists of (i) the Public Offering Act No.17,811 (the "Public Offering Act"), (ii) the regulatory framework passed by the Argentine National Securities Commission ("*Comisión Nacional de Valores*" or "CNV") under General Resolution No. 368/01, and other regulations passed by the CNV; (iii) the stock exchange rules and regulations mainly those of the Buenos Aires Stock Exchange (the "BCBA" or "*Bolsa de Comercio de Buenos Aires*"), (iv) rules issued by the securities markets (*Mercado de Valores*) adhering to stock exchanges (e.g., the BCBA), (v) resolutions of the official registration entity and clearing house ("*Caja de Valores S.A.*"), and (vi) regulations from *Mercado Abierto Electrónico S.A.* (the "MAE"), the electronic reporting system for trading of certain securities.

In addition, on May 22, 2001, the Executive Power issued Executive Order No. 677/01 dealing with "Transparency in the Securities Market". The goal pursued by said Executive Order No. 677/01 is to protect the investors as consumers of financial products.

On April 5, 2002, CNV issued General Resolutions 400 and 401/02 regulating Executive Order No. 677/01. The latter specifically deals with public offers and public exchange offers describing and regulating the different kinds of public offers and procedures.

### 3.1 Public Offering

#### Overview

Executive Order No. 677/01 provides a guideline to be complied with by the CNV at the time of regulating public takeover bids. CNV passed General Resolution No. 401/02 (the "Public Offering Resolution"), which sets forth the proceeding, rules and regulations on public takeover bids, either for cash or through an exchange of shares.

The Public Offering Resolution establishes that any person or entity intending to launch a public offer bid or a securities exchange bid must previously obtain CNV's approval.

Any public offering bid or shares exchange bid of companies admitted to the public offering regime must be addressed to all registered shareholders, including those whose shares lack voting rights.

If it is a *Mandatory Public Take-Over Bid*, according to the terms of the Public Offering Resolution, the offer must be also directed to holders of subscription rights or stock options, convertible debt securities or other similar securities

which may grant, directly or indirectly, a right to subscribe for, acquire or convert them into shares with voting rights.

### General Procedure

In any public offering bid, either for cash or through a shares exchange, the offeror has the duty to file with the CNV:

- A declaration of the offer, which must include the main conditions of the offering.
- A prospectus containing a description of the offering. The prospectus must contain minimum information requirements set forth in the CNV's rules and must be filed in a number sufficient to be delivered to the interested shareholders.
- Additional information. In addition to the prospectus, offeror must file (i) documents evidencing the guarantee required by CNV regarding the full compliance with the offering, (ii) governmental approval, if necessary, and copy of the minutes of the board of directors' decision to launch the offer, (iii) offeror's financial statements corresponding within the last two fiscal years, (iv) any information on the target company which has not yet been disclosed, (v) an irrevocable purchase commitment, in this sense all the conditions of the offering are binding on the offeror, except for the offered price, which may be increased only by not less than 5%.
- The term of the offer, which shall neither be less than 20 days nor longer than 30 days, as from the CNV's authorization date.

The CNV shall render its objections within a term of 15 days, after the expiration of which, the conditions of the offering shall be deemed approved.

Simultaneously with the filing with the CNV, the offeror shall have to:

- Give a detailed notice to the issuer as to the conditions of its offer.
- Publish, as from its filing date with the CNV, the essential conditions of the public offering to purchase and the places in which all the information may be accessed by those interested parties.

The Board of Directors of the issuer shall within 15 days immediately following receipt of the notice by the offeror:

- Render its opinion regarding the offered price and make a technical recommendation on the acceptance or rejection of the offer.
- Give notice of any corporate decision adopted or under discussion, which may be relevant for the purpose of accepting or rejecting the offer.

- Inform whether the directors and the senior managers who are shareholders are planning to accept or reject the offering.

Once the general term of the public offering to purchase has expired, the offeror and the intervening agents, as the case may be, shall report the results to the CNV and the self-governed entity quoting their shares. This information shall be published in the gazette of the self-governed entity quoting the shares and in a main newspaper in the Argentine Republic.

#### Different Kinds of Offers - Main Aspects of Each Offer

The Public Offering Resolution defines the different kinds of public offerings created by Executive Order No. 677/01: (a) Mandatory Public Take-Over Offerings, (b) Withdrawal From Public Offering Regime and Delisting of Securities, (c) Simplified Mandatory Public Take-Over Offerings, and (d) Competitive Bids.

##### (a) Mandatory Public Take-Over Offerings

CNV rules the terms and conditions for those offerings by which any person or legal entity, directly or indirectly, acquires for valuable consideration, in a single act or in successive acts within a 90-day term, a number of voting shares, subscription rights or stock options, convertible debt securities or other similar securities, granting the right to a "significant stake" (according to the terms to be established by the CNV), in the corporate capital and/or in the votes of a company. Any such person or entity shall previously effect, within a 10-day term as from the date on which the offeror decides to launch the offer, a mandatory public takeover bid for the target's securities.

This procedure is not mandatory if (i) offeror's acquisition of the "significant stake" does not imply obtaining the target's control, (ii) the change of control of the target is a consequence of the capital stock reorganization, or (iii) the target company is a company not subject to the optional statutory system for binding public offering according to Executive Order No. 677/01, Section 24.

The definition of "significant stake" varies depending on the specifics of each transaction. If the offeror wishes to acquire at least 35% of the capital stock and/or voting rights, the offering should be for at least 50% of the voting capital stock of the target company. If the offeror already holds between 35% and 51% of the voting capital stock of the issuer, and wishes to increase its participation in at least 6% in a 12-month period, the offering must be directed at least to 10% of the voting capital stock of the issuer. When the offeror seeks to obtain at least a 51% of the stock capital and/or voting rights of the issuer, the offer must be addressed to the total voting capital stock of the target.

The Public Offer Resolution sets forth that there shall be a "significant stake" when shares are held by different persons acting under a joint action.

#### (b) Withdrawal From Public Offering Regime and Delisting of Securities

When a public company voluntarily withdraws from the public offering regime and/or delists its shares, it must promote a public takeover offering for its shares, subscription rights, stock options and/or convertible debt securities.

To proceed with this public offering, the purchase of the shares shall be made out of liquid profits or out of free reserves once they are fully paid in, and may not adversely affect the creditworthiness of the company.

The offering need not be addressed to those who voted in favor of the withdrawal from the public offering regime. The price must be a fair market price as determined by the offeror following the guidelines established by Executive Order No. 677/01. In any event, the shareholders do not lose their right to object to the offered price in the courts with jurisdiction over this matter.

#### (c) Simplified Mandatory Public Take-Over Offerings

In cases of Acquisition of Residual Stakes (see “Minority Shareholder Protection” below) and of Repurchase of Own Shares, the offeror may opt to follow a simplified procedure. The terms and conditions for these public offerings vary from those described under 3.3.1 (a) as to the information, terms and publications.

#### (d) Competitive Bids

The Public Offering Resolution allows the existence of a public offering for the shares of a company, which is the target of another previously authorized public take-over offering.

Any competitive public takeover offering must at least comply with the following requirements:

- It must be filed with the CNV within the 15 days following CNV's authorization of the other public take-over bid already in course.
- It shall have as a purpose, at least, the same number of shares as that in the other public take-over offering.
- It must enhance the previous offering either by raising either the price or the consideration offered by at least five percent compared to the former, or by extending the initial offering to a number of securities in excess of such original five percent .
- The consideration must be cash or securities listed on authorized markets.
- Acceptance term must be 30 days.

Shareholders that have already tendered their shares in the first offering may withdraw their acceptance. First, the offeror must extend the term of its offering for the term of the competitive bid if it wishes to continue the offering. The first offeror shall, however, have the right to withdraw its offering if a competitive bid is launched. In any event, the first offeror may improve its offering by either raising the consideration by five percent or extending the initial offering to a number of securities in excess of such original five percent.

### Miscellaneous

#### (a) Duties of the Board of Directors

As of the date of the publication of the offering and until the publication of its outcome, the Board of Directors of the issuer shall refrain from closing any transaction out of the ordinary course of business or for the purpose of distorting the development of the offer, including but not limited to, issuing new shares of the target company, and selling or leasing issuer's real property or other material assets.

#### (b) Modification, Withdrawal and Termination of the Offer

Initially, public take-over offerings are irrevocable. However, the offeror may request CNV's authorization to modify the offer at any time prior to the last seven days to accept the offering, only if the modification involves an improvement for the shareholders. The modification must abide by the equal treatment under equal circumstances.

The offering shall be automatically extended for seven days while the CNV is analyzing the proposed modification. Once the modification has been accepted by the CNV, the offeror must publish the modified terms of the offering. All shares previously tendered shall participate in the new terms of the offer, unless otherwise decided by the accepting shareholders.

The offeror may only withdraw the offering (i) if a competitive bid is launched, (ii) when its shareholders meeting rejects the proposal of increasing the capital stock in case of a securities exchange offer, (iii) if the Argentine Antitrust Commission does not authorize the offering or if said authorization is not obtained before the offering expiration, (iv) if extraordinary circumstances out of offeror's control make the offering impossible and the CNV confirms said circumstance, and (v) if the securities issued to be exchanged for the shares of the target company are not admitted to the public offering regime.

In addition, the offering shall be invalid if the minimum number of shares required is not tendered. In all cases, the offeror must pay all costs and expenses corresponding to the shares that have already been rendered.

#### (c) Acceptance and Settlement of the Offer

Accepting an offer is initially irrevocable. The offeror must publish the outcome of the offering. When the offer has been made for cash, it shall be settled on the day on which the outcome of the offer is published. Once the transaction has been settled, the CNV shall release the guarantee granted by the offeror. Should an offering fail, the offeror cannot begin another public offering for the same securities before 180 days as from the date of publication of the outcome of the offering.

(d) Transactions performed by the so-called "*Economic Concentrations*" (Concentraciones Económicas)

Once the offering has been filed with the CNV or published in the newspaper, the offeror must give notify the Argentine Antitrust Commission within seven days.

The offering shall be deemed accepted if authorized by the Argentine Antitrust Commission before the day of the offer expires. If it is not authorized, the offeror must withdraw the offering. The offeror shall have the right to withdraw the offering (i) if not authorized by the Argentine Antitrust Commission before the expiration date or (ii) if the Argentine Antitrust Commission bases its approval on material changes in the offering.

### **3.2 Securities regulation**

The CNV is the principal authority in the securities market. The Public Offering Act provides for CNV's authority, duties and obligations as the controller of the securities market in Argentina. The CNV is a self-regulated public entity with jurisdiction throughout the country. Currently, the relationship of CNV with the Executive Power is held through the Secretariat of Finance (*Secretaría de Finanzas*) and the Sub-Secretariat of Financial Services (*Subsecretaría de Servicios Financieros*).

As a result of the enactment of CNV's Duties and Powers Law No. 22,169, the CNV is in charge of controlling compliance with corporate governance requirements of public companies. Private companies continue to be controlled by the Public Registry of Commerce in Argentina.

Whenever a systematic risk practice, or any other serious financial threat, is identified, the CNV, or the respective self-regulated entity, may preventively suspend the public offering or the negotiation of securities.

### **3.3 Insider trading**

CNV's Rules determine which acts shall be deemed to have been performed against transparency rules within the scope of the public offering.

The directors, managers, statutory auditors, supervisory council, controlling shareholders and professional counsel to the issuer; any person having access to the information; rating agencies' personnel; private entities' personnel involved in the public offering, including the *Caja de Valores*; public entities' personnel involved in the public offering, including the CNV; and any person who accidentally or by his or her temporary relationship may have access to any privileged information in his/her own benefit or for the benefit of third parties, may not:

- Use such privileged information to obtain any kind of advantages for their own benefit or for third parties' benefit, whether resulting from the purchase or sale of marketable securities futures, options or any other kind of transaction related to the public offering regime.
- Perform, either for their own account, or on behalf of third parties, directly or indirectly, the following acts: (i) prepare, facilitate, participate in, or perform any kind of transaction on the market, regarding the marketable securities, futures, or options referred to in the information; (ii) communicate said information to third parties, unless in the ordinary course of their employment, profession, office or craft; (iii) recommend third parties to acquire, or assign marketable securities, futures or options or cause third parties to purchase, or assign them, based on said information.

For cases involving a violation of prohibition described above, Executive Order 677/01 sets forth in addition to any applicable penalties, that the earnings obtained from the sale of the involved securities within six months following the transaction belongs to the issuer, who can recover said earning.

The statute of limitations for this recovery action is three years. Any shareholder may file such action if the issuer did not do so within 60 days of being notified.

### 3.4 Minority shareholder protection

In general terms, protection rules governing minority shareholders are contained in the Commercial Companies Act No. 19,550. Certain minority shareholder protection rules are also contained within the Argentine securities legal framework.

For example, in case of a public takeover offering for 51% of the stock of a public company, the offeror has to address said offer to 100% of the capital stock of the company. Also, delisting of a public company requires the issuer to make a public offering to all of the shareholders.

In addition, Executive Order 677/01 sets forth the principles for a specific remedy, the acquisition of residual stakes, for minority shareholders when certain conditions are met.

The Acquisition of Residual Stakes, a kind of “*squeeze-out procedure*”, works like a put-and-call agreement subject to certain conditions. When a corporation is under “almost total control” of another company, any minority shareholder may, at any time, demand the controlling party to publicly buy out all minority shareholders; and within a term of six months as from the date the issuer is almost completely controlled by another person, the latter may issue a unilateral statement of its decision to acquire the total remaining capital stock.

Terms and conditions vary from those described in *Public Offerings*, 3.3.1 (a). Any corporation shall be under “almost total control” when another individual or company, either directly or through one or more controlled companies, holds 95 percent or more of the subscribed capital stock. “Minority shareholders” are the holders of any type or class of shares, as well as the holders of all other securities convertible into shares not belonging to the controlling party.

The controlling company or person and the controlled company must inform the CNV and the self-regulated entity as to which controlled company is listed, the “almost total control” situation within 10 days as from the date on which the company first falls under said “almost total control”.

If communication by the controlling party or the controlled party is inadequate, minority shareholders may request the CNV to evaluate the “almost total control” situation.

Once the controlling party has requested to make a purchase offering to the minority shareholders, if such controlling party accepts the offering, it may choose to make a public takeover bid or to acquire the shares by the statement of acquisition. Exchange offers are also admitted.

Executive Order No. 677/01 sets forth the mechanism for “bought-out shareholders” to object to the price paid by the controlling party.

Two judicial precedents have been published concerning objections filed by minority shareholders against the Acquisition of Residual Stakes, which declare the latter unconstitutional and have sustained the minority shareholders' claim not to be acquired forcibly.

## 4. Consequences of achieving different levels of investment

Ownership	Rights	Law No. 19,550
One share	To participate in corporate profits and losses.	Section 13
	To review the corporate and accounting books and records and request the Board of Directors for information. This right may be exercised by the shareholders in case no Statutory Auditor or Supervisory Committee is appointed.	Section 55
	To receive the proportional reimbursement after liquidation of the Company and payment of all the Company's liabilities, except otherwise agreed upon.	Section 109
	To receive the liquidator's distribution proposal and challenge it.	Section 110
	To ask for the judicial intervention of the corporation. This may be requested in case all previous legal stages are complied with. (e.g., the motion to hold a shareholders' meeting that was rejected by the Board of Directors or the Statutory Auditor).	Sections 113 and 114
	To exercise the right of first refusal to subscribe for new shares.	Section 194

Ownership	Rights	Law provision
<b>One share</b>	To attend and vote at shareholders' meetings.	Section 216
	To request at his/her own cost a signed copy of any shareholders' resolution.	Section 249
	To exercise the right to retire from the corporation in case certain resolutions not agreed upon are adopted at the shareholders' meetings.	Section 245
	To refute and request from the court the suspension of resolutions adopted at the shareholders' meetings.	Section 251
	To exercise cumulative voting rights for purposes of attempting to appoint up to one-third of the members of the board of directors.	Section 263
	To file individual claims against the directors or statutory auditors for their failure to fulfill their corporate duties.	Section 274
	To file individual claims against directors who have caused damages to the person or assets of the shareholders.	Section 279

Ownership	Rights	Law No. 19,550
2%	To request the statutory auditor to provide information on any matter within the scope of the syndic's supervisory duties.	Section 294
	To request the syndic to conduct investigation procedures on specific issues.	Section 294
5%	To call an ordinary or extraordinary shareholders' meeting.	Section 236
	To oppose the approval of the performance of the directors and statutory auditors as a condition to bring the corporate liability action (" <i>acción social de responsabilidad</i> ") against them.	Section 275
10%	To request the PRC to supervise the corporation. This action may be exercised by the PRC provided that the corporation is not subject to supervision by the other public agencies (e.g., banking and financial institutions, insurance entities, etc.).	Section 107
	In case of liquidation, the shareholder may request the partial distribution of the liquidation dividend in advance, provided that the company's liabilities are guaranteed.	Section 301

## 5. Major tax considerations

### 5.1 Transactions: Acquisition of share vs. assets

#### Stock transfer taxation

- a. Stamp tax. The purchase of stock is not subject to stamp tax for companies incorporated in the City of Buenos Aires. For companies incorporated in the Provinces, the purchase of stock shall be subject to an approximately 1.5% stamp tax. (The rate, however, is not uniform in all Provinces.)
- b. VAT. The purchase of stock is not subject to the 21% VAT.
- c. Income tax. Any gain obtained by an Argentine company or an Argentine branch of a foreign company for the sale of stock is taken into consideration to determine the taxable result of the seller, which is subject at the end of the fiscal year to a 35% corporate income tax rate.

No other tax applies as regards the transfer of stock.

### 5.2 Capital gains tax. Real estate transfer tax. Successor's liability

#### Legal effects of the transfer of an ongoing concern

##### General effects

The general principle is that the Buyer face certain liabilities arising from the transferred ongoing concern unless the parties comply with all the requirements established by the BTL. If the parties comply with the procedures established in the BTL, the Buyer will have "perfect title" to the purchased assets, and will not be liable for claims of the Seller's creditors other than those declared by the Seller. (Credits claimed by opposing creditors should have been attached by them during the 20-day term mentioned in Section 2.4 above.)

However, Buyer and Seller will be jointly liable even if the procedure of the BTL is followed only with respect to omissions or violations to said procedure (e.g., if the amounts of the opposing creditors were not retained or deposited). In this respect, please be aware that if the transfer procedure is not registered with the PRC, such transfer may not be enforced against third parties, including but not limited to creditors of the Seller and thus allowing such creditors to proceed with their claim against the assets so transferred.

### Tax Liability

As regards federal and municipal taxes of the City of Buenos Aires (“Municipal Taxes”), the Tax Procedural Law No. 11,683, as amended, and the Fiscal Law No. 541 of the City of Buenos Aires, respectively, provide that the Seller and Buyer would be jointly and severally liable for non-assessed taxes that the Seller may owe, unless the appropriate notification to the Tax Authorities is made prior to the transfer of the assets and if the Tax Authorities do not make an assessment afterwards within a certain period of time. In particular, such tax liability shall cease:

- a. Three (3) months after the transfer as regards federal taxes and a hundred and twenty (120) working days after the transfer as regards Municipal Taxes, if such transfer is reported to the corresponding Tax Authorities at least fifteen (15) working days prior to its effective date, or
- b. If the Tax Authorities admit the solvency of the Seller or consider that the security offered by the latter is sufficient.

Once the notice has been given to the Tax Authorities with the required advance, the transfer takes place, and if three months or a hundred and twenty (120) working days, respectively, have elapsed since then with no action from the authorities, the Buyer will be free from any liability for the past taxes that the Seller may have owed the Buyer.

If jurisdictions other than the City of Buenos Aires and the province of Buenos Aires are involved, the termination of liabilities should be analyzed on a case-to-case basis.

### Taxes applicable to transfer of assets

The general principle is that there must be an arm’s length allocation of the purchase price to the different assets included in the transaction (e.g., real property, inventories, fixed assets, intangibles, goodwill and non-competition payments).

The final income tax to be declared by Seller shall result at the end of the fiscal year by applying the 35% corporate income tax rate to the result of the fiscal year in which the transfer of assets takes place. The result of such fiscal year arises from the aggregate of the taxable profits deriving from the transfer of the different assets included in the assets transfer (e.g., real property, inventories, fixed assets, intangibles, goodwill and non-competition payments) less the applicable deductions incurred in the same fiscal year.

### Real estate transfer taxation

- Stamp tax. City of Buenos Aires: 2.5%<sup>1</sup>. Province of Buenos Aires: 4%; Province of Córdoba: 2%. Province of Santa Fe: approximately 2.5%. In other provinces, rates may be different.
- The stamp tax is a local documentary tax that normally applies with regard to the value of the transaction or exchange of documents implementing the creation, amendment and/or extinction of rights and/or obligations.
- Notary fees and costs. Negotiable. Fees and costs may be raised to a maximum of 2.3%.
- Income tax. Upon execution of the public deed of transfer, the intervening public notary must withhold the income tax from the purchase price. The rate varies depending on whether the seller is Argentine or foreign, an individual or a legal entity. In case of an Argentine corporate Seller, the applicable rate is 3%<sup>2</sup>.
- Value-Added Tax ("VAT"). In general, real property transfers are not subject to VAT. However, VAT is applicable at the rate of 21% to real estate transfers involving any type of construction within the building done by the Seller with the intention to obtain a profit out of its sale, and only on the portion of the purchase price attributable to said construction.

### Inventories transfer taxation

- Stamp tax. Not applicable in the City of Buenos Aires. The stamp tax rate applicable to the transfer of industrial businesses is 1% in the Province of Buenos Aires; 1.4% in the Province of Córdoba and 1.4% in the Province of Santa Fe. In other provinces, rates may be different.
- Gross receipts tax. This local tax will generally apply with regard to the transfer of inventories which are the Seller's current business. In the Province of Buenos Aires, the gross receipts tax applicable to manufacturing of certain products is 1.5%. However, if certain requirements are met, it is possible to qualify for certain exemptions. In the Province of Córdoba, the manufacturing of certain products is taxed at a rate that may range between 1.05% and 1.50% depending upon size and production volume of the business. In the Province of Santa Fé, the manufacturing of certain products is exempt from gross receipts tax upon the compliance with certain requirements. In other provinces, rates may be different.

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<sup>1</sup> Unless otherwise expressed, all the percentages mentioned in this memorandum apply with regard to the amount of the transaction.

<sup>2</sup> This withholding is on account of the annual tax liability of the taxpayer. If at the time of execution of the public deed, the purchaser pays 50% or less of the purchase price and the balance is payable within a period exceeding five years, the 3% withholding rate shall be reduced to a 1.5% rate.

- Income tax. The procedure to determine the taxable profits arising from the sale of inventories is as follows: From the net value of the sale of such inventories the following items should be deducted: (i) discounts or similar items, generally granted for similar operations in a fair market context; and (ii) the cost of acquisition of such assets. This cost should be established, for tax purposes, at the price of the last purchase made in the last two months prior to the end of the fiscal year; if there have not been purchases in such period, the cost of the assets should be determined according to the price of the last purchase performed in the fiscal year.

In addition, income tax withholdings will apply as regards the purchase price corresponding to inventories. Income tax withholding must apply at the time of the payment and must be paid to the Tax Authorities. The amounts withheld are creditable against the annual tax liability of the Seller. The withholding tax applies at the rate of 2% on amounts exceeding US\$ 12,000.

- VAT. The VAT applies on the net price of the good, at the current rate of 21%.

#### Fixed assets transfer taxation

- Stamp tax. Not applicable in the City of Buenos Aires. In the provinces, this tax applies at the rate of approximately 1%. (See 4.2.1 for stamp tax rates in the Provinces of Buenos Aires, Córdoba and Santa Fé.) In other provinces, rates may be different.
- Income tax.
  - a. Taxable profits arising from the sale of fixed assets (except real property). The procedure to determine the taxable profits arising from the sale of fixed assets should be as follows: The acquisition cost, reduced in the total value of the annual depreciation amounts is deducted from the transaction price.
  - b. Depreciation. Fixed assets may be depreciated on a straight-line basis. The usual annual depreciation rate for machinery and equipment is 10%; and for dies, tools and vehicles, 20%. In special cases, the Tax Authorities may authorize higher depreciation rates.

The income tax withholding applies with regard to the transfer of personal properties at the rate of 2% on amounts exceeding US\$ 12,000.

- VAT. The VAT applies as regards the net price of the goods, at the current rate of 21%.

### Intangibles transfer taxation

- Stamp tax. Not applicable in the City of Buenos Aires. (See 4.2.1 for stamp tax rates in the Provinces of Buenos Aires, Córdoba and Santa Fé.) In other provinces, rates may be different.
- Income tax. The Seller will pay income tax on its taxable profits. The procedure to determine the taxable profits arising from the sale of intangibles should be as follows: The acquisition cost, reduced in the total value of the annual depreciation amounts, if applicable, may be deducted from the transaction price. If the intangibles have not been purchased by the seller, there is no acquisition cost to be deducted from the transaction price. In this case, the taxable profit will be the transaction price.

The income tax withholding applies with regard to the transfer of intellectual property rights at the rate of 2% on amounts exceeding US\$ 12,000.

### VAT

- a. The transfer of intangibles is not subject to VAT provided that the parties to the transaction do not enter into a contract to carry out provisions subject to VAT. In effect, according to the VAT Law, the performance of provisions subject to VAT makes that any transfer or license for the use of intellectual, industrial and commercial rights entered into by the same parties is also subject to VAT.
- b. On 6/17/98, Executive Order 692/98 regulated the VAT Law. Section 8 thereof states that supplies subject to VAT are supplies with which to do and give something.
- c. Pursuant to the foregoing, if the parties to the transaction do not provide any services or work subject to VAT, we understand that the transfer of intangibles is not subject to VAT.

### Tax treatment applicable to the goodwill

- Stamp tax. Not applicable in the City of Buenos Aires. (See 4.2.1 for stamp tax rates in the Provinces of Buenos Aires, Córdoba and Santa Fé.) In other provinces, rates may be different.
- Income tax. The taxable profit is equal to the portion of the purchase price which exceeds the fair market value of the other items included in the transfer of assets (e.g., real estate properties, inventories, fixed assets, intangibles and non-competition payments).

- VAT. The transfer of goodwill is subject to the same VAT treatment applicable to the transfer of intangibles. Then, it is not subject to VAT provided that the parties to the transaction do not enter into a contract for the provision of services or works subject to VAT.

### **5.3 Capitalization rules. Withholding tax on dividends**

Introduction. The financing of an Argentine transaction may be made out of equity or out of debt. Herein we describe the tax treatment of the two alternatives as well as certain specific financial techniques to mitigate the above mentioned tax treatment.

Equity. There are no tax consequences with respect to injecting capital into the company. Exception is made for the increase of the Personal Assets Tax rate in 0.5%, payable by the non-resident shareholder over the value of its shareholding in local companies as of each fiscal year closing date.

With respect to the tax consequences arising from the repatriation of capital, the repatriation of the capital could be the result of (i) the remittance of a dividend declared by the local company, (ii) the reduction of the corporate capital of the local company, (iii) the remittance of the proceeds arising from the realization of the assets and subsequent dissolution of the local company, and (iv) the repayment of irrevocable capital contributions made on account of future subscriptions of the corporate capital of the local company.

For income tax purposes, when the repatriation of investments under (i), (ii) and (iii) is made with funds which result from the excess of accounting profits over tax profits, such excess is recharacterized as a dividend and may be subject to the new tax on dividends.

In that respect, law 25,063, published in the official gazette on December 30, 1998, establishes that when dividends to be paid exceed the accumulated taxable net income of the distributing company at the end of the previous fiscal year, a 35% income tax must be withheld on the excess at the time of payment.

To determine the taxable net income, after establishing the taxable income according to the applicable rules of the Income Tax Law, the income tax paid by the local company must be subtracted and dividends received from other local companies must be added.

#### **Indebtedness**

In addition to the tax treatment corresponding to the financing of an Argentine transaction with debt, the purpose hereof is to refer to certain matters related to the potential loss that might result from the financial statements of an Argentine legal entity if it is funded with debt.

Under the Argentine corporate law, a legal entity: (i) is dissolved when it loses its corporate capital [Argentina still subscribes to the concept of “nominal corporate capital”, which may be lower than the shareholders’ equity of the company]; and (ii) is required to reduce its corporate capital when the losses are higher than the reserves plus 50% of the corporate capital.

Under (i), the dissolution shall take place if, within a “reasonable period of time” after the Shareholders’ Meeting discuss the annual financial statements, the corporate capital is not increased or the like. A reasonable period of time might be 30 days thereafter, depending on the actual circumstances involving the matter.

### **Alternatives to preventing or solving this problem**

The alternatives to preventing or solving the problem available to the shareholders are basically as follows:

Increase of the corporate capital. This alternative, however may not be the best one if used as the exclusive solution. In effect, under Argentine law, only 50% of the corporate capital may be used to compensate losses.

Increase of the corporate capital with a premium. This alternative may be much more convenient than the foregoing, since the total amount of the premium would be a reserve from an accounting standpoint, and 100% of the reserves may be used to compensate losses.

There is no legal requirement as to the ratio capital increase/premium. The amount of the premium, initially, can be freely determined by the shareholders.

Capitalization of the intercompany debt. The capitalization would consist of increasing the corporate capital in the amount of the intercompany debt necessary to avoid or to solve the dissolution status. Please note that the interest portion of an intercompany debt is subject to a 35% withholding tax to be made at the time of the capitalization.

Conversion of the intercompany debt into an irrevocable capital contribution. Instead of capitalizing the intercompany debt and increasing the corporate capital, it may be more convenient to have the intercompany debt converted into irrevocable capital contributions. The convenience results from the fact that irrevocable capital contributions are a reserve from an accounting standpoint and, consequently, may be used 100% against the loss. (Please, recall that only 50% of the corporate capital may be used against losses.) This alternative is also subject to a 35% withholding tax on the interest component at the time of the conversion.

Condemnation of the intercompany debt. This is a viable alternative, and will have no adverse tax impact thereon provided such condemnation does not

result in a positive financial statement. In effect, if such condemnation generates a profit, such profit may be taxable.

After making these comments, we outline below the tax treatment applicable to the financing of an Argentine transaction with debt.

## **Value-Added Tax**

Law No. 25,063 has introduced a new taxable event: financing by foreign parties to Argentine taxpayers whose activities are subject to VAT and are registered as VAT-responsible.

Law No. 25,063 has also amended the VAT tax rate in relation to certain activities. In effect, although the general tax rate remains at 21%, as well as the 27% tax rate for certain public services, a new reduced 10.5% tax rate has been included.

The new reduced 10.5% tax rate applies with regard to the following financial transactions:

- a. Interest on loans granted by Argentine financial entities provided borrower is a VAT registered taxpayer;
- b. Interest on loans obtained abroad, provided lender is a financial entity incorporated in countries that have adopted the Basle Banking Standards;

## **Withholding Tax**

Section 93, paragraph c) of the Income Tax Law Income Tax Law (the "ITL") as amended by law No. 25,063 establishes a withholding tax ranging from 15.05% to 35%, on interest payments to foreign beneficiaries, if the following conditions are met:

- (i) A 15.05% tax rate will be applicable if:
  - a. The borrower is an Argentine financial entity; or
  - b. The borrower is an Argentine legal entity; and the lender is a banking or financial entity incorporated in countries that have adopted international banking standards settled by the Basle Banking Committee; and the lender is authorized to lend and borrow money from residents of the country in which it is incorporated.
- (ii) A 35% tax rate will be applicable if:
  - a. The borrower is an Argentine legal entity (excluding banks and financial entities); and
  - b. The lender is not a banking or financial entity incorporated in countries that have adopted the international banking standards settled by the Basle Banking Committee; or, if the lender is incorporated in countries that have adopted international banking

standards settled by the Basle Banking Committee, the lender is not authorized to lend and borrow money from residents of the country in which it is incorporated.

### **Tax Treaties to avoid double taxation**

If the lender is organized in a country with which Argentina has entered into treaties to avoid double taxation (the "Treaties"), the Treaty provisions will prevail over the ITL with respect to the applicable withholding tax rate.

To enjoy Treaty benefits, certain procedures established by DGI RG 3497/92 should be complied with, mainly the filing of a sworn statement, certified by the tax authority of the other signatory country in a specific format (annexed hereto as Exhibit II), with the withholding agent.

### **Deduction of expenses. Thin Capitalization Rules**

The general principle is that all expenses necessary to keep, maintain and preserve the source of income are deductible for tax purposes.

In addition, Law No. 25,063 included certain Thin Capitalization Rules (the "Thin Capitalization Rules"), as follows:

The tax law now limits the deduction of certain categories of financial interest paid by companies other than banks and financial institutions and by unincorporated businesses. The following categories of financial interest continue to be fully deductible: (1) financial interest paid to individuals and (2) financial interest paid to a foreign party that is subject to a 35% withholding tax, and (3) 40% of other financial interest payments. In order for the remaining 60% of the financial interest in the residual category to be fully deductible, the taxpayer paying the financial interest must pass at least one of the following new statutory thin capitalization tests:

the total of the financial interest payments, other than the payments in categories (1) and (2) above, which does not exceed 50% of the net taxable income of the company (determined before deducting any financial interest), or

the total of the taxpayer's indebtedness giving rise to financial interest, other than loans generating financial interest in categories (1) and (2) above, which does not exceed 2.5 times the taxpayer's equity.

If the company fails both tests, then a portion of the deduction for the remaining 60% of the financial interest in question is denied. The nondeductible portion is equal to the greater of (1) the percentage by which the liabilities arising therefrom in this category exceed 2.5 times the taxpayer's equity, or (2) the percentage by which 100% of the financial interest in this category limitation exceeds 50% of the taxpayer's net taxable income, as defined in the manner described above.

Financial interest that is nondeductible in the year paid under these new rules is carried forward and added to the financial interest to be considered under the Thin Capitalization Rules in the following year.

The tax authority is allowed not to apply the above mentioned parameters if the activity carried out by the borrower justifies that such borrower may have debts in excess of such parameters. There is no definition in Law 25,063 as to which such activities may be.

Thin Capitalization Rules would not apply to intercompany loans subject to a 35% withholding tax on interest payments.

#### **5.4 Transfer pricing regulations**

In December 1998, Argentina introduced in the Income Tax Law a new set of transfer pricing rules. This set of rules has suffered subsequent amendments, that we discuss below.

##### Transfer Pricing: Statutory Provisions - General

Two sections of the Income Tax Statute and eleven sections of the Regulations deal with transfer pricing. These are Sections 14 and 15 of the Statute and Sections 11 and 19 to 21.7 of the Regulations.

Section 14 of the Statute adopts the arm's length principle. Section 14 basically provides: "Any transaction between related parties shall be regarded as entered into between independent parties, provided that the consideration and conditions are consistent with normal market practices between independent parties".

Where such terms and conditions are not at arm's length, Section 14 provides that they shall be subject to adjustments under Section 15.

Section 8 of Resolution 1122/2001 of the Tax Administration provides that all taxpayers carrying out transactions with nonresident related parties are required to maintain documentation demonstrating the correct determination of the prices or profit margins that are declared in the informative returns and the acceptability of the comparability criteria used in determining such prices.

Therefore, taxpayers carrying out transactions with nonresident related parties must prepare a transfer pricing study (including comparability and economic analyses) through which compliance with the arm's length standard is evidenced. Such transfer pricing study must contain the functions, activities and risks borne by each party in the transaction and an explanation as to the transfer pricing method used.

Section 15 of the Income Tax Statute provides five methods for determining whether those terms and conditions fall under the arm's length standard:

a. Comparable and uncontrolled price method

Section 21.1 of the Regulations provides that, under the CUP method, the arm's length price is equal to the price agreed upon by independent parties in a "comparable and uncontrolled transaction".

This method cannot be applied where the nature, qualities or volumes of the products involved in the transactions under examination are not similar. Neither can this method be applied where (i) the markets in which the transactions are carried out are not comparable; (ii) the financial or monetary conditions of such transactions cannot be adjusted to achieve comparability; or (iii) where the intangibles involved in such transactions are not identical or similar (see Section 21.6 of the Regulations).

b. Resale price method

Under Subsection 21.1(b) of the Regulations, the arm's length price can be represented by the following formula:

$RP \times (1 - \text{GPM agreed upon in comparable uncontrolled transactions}) = \text{arm's length price}$

Where

RP: Resale Price

GPM: Gross profit margin or percentage, which is calculated as follows:

$$\frac{\text{Gross profits}}{\text{Net sales}} = \text{GPM}$$

c. Cost plus method;

Under Subsection 21.1(c) of the Regulations, the arm's length price can be represented by the following formula:

$\text{COGS} \times (1 + \text{GPM agreed upon in comparable uncontrolled transactions}) = \text{arm's length price}$

Where

COGS: Cost of goods or services sold

GPM: Gross profit margin or percentage, which is determined as follows:

$$\frac{\text{Gross profits}}{\text{COGS}} = \text{GPM}$$

d. Profit split method;

Section 21.1 of the Regulations defines this method as that which seeks to determine the division of profits between related parties by determining the division of profits that independent enterprises will have expected to realize from engaging in the transaction. Section 21.1 lays down the following procedure:

- e. The total profit realized in the transaction must be determined by adding the profits realized by each of the parties to the transaction.

This total profit must be split between the related enterprises taking into account assets used or costs and expenses assumed by each of the parties to the transaction.

f. Transactional Net Margin method; TNM

Under Section 21.1, the TNM is the method by which the net margin of the parties to a controlled transaction is established by reference to the net margin that one of such parties earns in comparable uncontrolled transactions or to the net margin earned by independent enterprises in comparable and uncontrolled transactions.

g. Commodities Export Method through an international intermediary.

Lay No. 25,784 incorporates this method in Section 15 of the ITL which is applied with regard to exports of cereals, oil seeds, and other land products, hydrocarbons and their by-products, and goods traded in transparent markets, in which an international intermediary other than the final beneficiary of the goods participates. In this scenario, the best method by which to determine the Argentine source income of the export is the quotation value of the goods in the transparent market on the date of loading the goods, irrespective of the price that would have been agreed upon with the international intermediary, unless this price would have been higher.

Section 15 states that the application of this method to commodities export may be avoided if certain requirements are met and that the Executive Branch may set out other methods that shall be included in the Regulations.

Transfer Pricing: Comparability Analysis - Best method

Section 15 provides that, in determining transfer prices, the most appropriate method shall be used with regard to the type of transaction being examined. This provision seems to follow the principles adopted under the OECD Guidelines.

The Regulations (see Sections 21.1 and 21.2) provide that, in undertaking transfer pricing analyses, comparability standards must be met.

Section 21.2 provides that a transaction shall be considered comparable to another transaction if (i) none of the differences between the transactions under analysis affect the price, the profit margin or the amount of the consideration that is required to be examined under the transfer pricing methods of Section 21.1 of the Regulations or (ii) adjustments can be made to eliminate such differences (or their material effects) so as to achieve a substantial degree of comparability.

Comparability among transactions and/or enterprises must be determined taking into account, among other things, the following:

- a. Characteristics of the transactions;

With regard to these characteristics, the following elements can be examined:

In the case of financial transactions: principal amount of the loan, term, guarantees, debtor's solvency, effective ability to pay, interest rate, commissions, administrative charges and any other payment or charge in connection with such transactions.

In the case of services: nature of the services; whether the associated enterprise is in need of the services; information concerning industrial, commercial or scientific experience or technical assistance (if any) involved in the transaction; transfer or concession of intangibles.

In the case of sales or lease of tangible property: physical features of the property, the relationship with the purchaser's activities, its quality and reliability, the availability and volume of supply.

In the case of transfer or exploitation of intangible property: the form of transaction (e.g., licensing or sale), the exclusive or non-exclusive character of the rights transferred, limitations on the geographic area in which rights may be exercised (if any), the type of property (e.g., patent, trademark, etc.), the duration and degree of protection and the anticipated benefits from the use of the property.

- b. Functions undertaken and risks assumed by each of the parties to the transaction (e.g., design, manufacturing, assembling, research and development, purchasing, distribution, marketing, advertising, transportation, financing, management and after-sale servicing; assets employed (e.g., intangibles) and risks assumed by the respective parties (e.g., commercial risks, such as input cost fluctuations; financial risks, such as interest rate or currency exchange rate variability).
- c. Contractual terms that could have influenced the price or margin under examination (e.g., payment conditions; volume to be acquired or sold; duration of the agreement; guarantees; etc.)

- d. Economic circumstances (e.g., the geographic location; the size of the markets, the type of markets, the levels of supply and demand in the markets, the extent of competition in the markets, etc.)

It should be noted that the elements listed in Section 21.2 are illustrative in character, as indicated in the second paragraph thereof (“it shall be taken into account, among other elements or circumstances, the following...”).

#### Transfer Pricing: Consequences derived from TP adjustments. Penalties

Where the price of the transactions is adjusted in accordance with the provisions of Section 15 of the ITA, the Tax Administration will redetermine the taxable income declared by the Argentine company in its tax returns, by applying an adjustment to the cost of sales and/or expenses, or to the sales revenues, as the case may be (notwithstanding that the transfer pricing study could have been focused on gross margins or return on profits). Such redetermination of taxable income may give rise to an unpaid amount of income tax. Once taxable income has been determined, the Tax Administration will notify the Argentine company of any income tax deficiency. If the Tax Administration succeeded in the tax redetermination procedure, the Argentine company will be subject to interest and, eventually, to the penalties described below:

- a. Interest:

The Argentine company must pay interest on the amount owed the Tax Administration, as from the date on which the payment of the tax is due. The prescribed monthly interest rate is currently 2 %.

- b. Penalties - Tax Avoidance:

Under Section 45 of the Tax Procedure Act (TPA), every person who has made inaccurate statements in a return is guilty of an infringement and is liable to a fine of not less than 50 % and not more than 100 % of amount of the tax avoided. This fine is not applicable where the inaccuracy is incurred due to an excusable mistake (which is hard to evidence and interpretation is very restrictive). The preparation of an appropriate and comprehensive transfer pricing study may provide the Argentine company with grounds to support an "excusable mistake" position, in order to avoid the application of this penalty.

The penalty may be reduced to 16.66% of the amount of the tax if the Argentine company files an amended tax return prior to the initiation of a tax determination procedure, i.e., before a notice of initiation of the procedure is given to the Argentine company. The penalty may be reduced to 33.33 % of the tax if the Argentine company accepted the tax determination within 15 days after notice of initiation of the procedure is given. The penalty will be reduced to 50 % of the tax if the Argentine company accepted the tax determination in any other case. This penalty reductions are applicable only if the Argentine company is not recidivist in relation to the tax evasion infringement.

[NOTE: Failure to pay taxes due to deceptive tax returns - Tax evasion: Under Section 46 of the Tax Procedure Law, every person who has made false or deceptive statements in a return to evade payment of taxes is guilty of an infringement and is liable to a fine of not less than 200 % and not more than 1000 % of the amount of the tax that has been sought to be evaded. This fine might be imposed on the Argentine company if the Tax Administration understood that the Argentine company's conduct was willful. In other words, if the Argentine company's conduct were aimed at evading the payment of taxes, penalties for tax evasion, rather than penalties for tax avoidance, would be applicable. This conduct may also result in a criminal offense.]

## 6. Employment law considerations

### Obligations to the employees

Should the employer acquire the Company's shares and provided it continues to be the same legal entity, its liabilities or duties shall remain the same. The law does not require giving any kind of notice to the employees or the pertinent union.

The Employment Contract Law establishes that the seller and the buyer are jointly and severally liable for all labor obligations existing on the date of the transfer of any establishment to another company<sup>3</sup>.

Labor law refers to the transfer of the establishment, a notion that also comprises the bulk transfer.

Case law of the Labor Appellate Court of the City of Buenos Aires has established that the buyer of an establishment is also liable for the seller's labor obligations arising from labor relationships terminated before the seller's acquisition of the company. Therefore, the buyer is also liable for the debts to former employees terminated before the acquisition.

The bulk transfer does not eliminate labor debts and/or contingencies. Labor creditors may enforce their claims against the buyer without urging them to register their claims in the bulk transfer proceeding for the remaining term. The statute of limitations of labor actions is two years calculated starting from the date on which the claim arises.

The new employer may not change the essential terms of employment contracts (purpose of the contract, labor shift, salary), without the employee's express approval. Moreover, and particularly regarding salary changes, many judgments have rejected salary abatement agreements based on their interpretation of the so-called irrenunciabilidad principle (which forbids waiving certain rights) set forth by Section 12 of the Employment Contract Law.

The parties do not need to notify the employees as regards the closing of the transaction or request their consent thereto.

Termination of the employment agreement subject matter of the transfer

As far as the bulk transfer is concerned, the transferee undertakes all the employment contract obligations and the employees may not consider

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<sup>3</sup> Section 228 of the Employment Contract Law establishes that: *"The transferor and the transferee of an establishment shall be jointly and severally liable as to the obligations arising from the employment contract existing on the date of the transfer."*

themselves as dismissed as a consequence of said transfer, unless there should be a specific injury or an abatement of the new employer's personal liability<sup>4</sup>.

The buyer may then terminate employment contracts under any of the following grounds set forth by the Employment Contract Law (ECL): (i) mutual agreement, (ii) unfair dismissal, (iii) fair dismissal (iv) employee's death or inability, (v) employee's retirement, (vi) the expiration of the terms mutually agreed upon, or (vii) employee's resignation.

As far as unfair dismissal is concerned, in addition to the existing grounds for termination of the labor relationship<sup>5</sup>, the employer must pay: (i) a compensation in lieu of prior termination notice; (ii) payment covering the dismissal month; and (iii) seniority pay.

The party that fails to give prior termination notice or does so in an insufficient way, shall pay the other party a compensation in lieu of such prior termination notice equivalent to the employee's salary that would have been earned by the employee over the following terms covering: (a) one month, when the employee's seniority does not exceed 5 years; and (b) two months, when the employee's seniority exceeds 5 years. Terms shall be computed starting from the first day of the month subsequent to the one in which such notice was given.

Should the employment contract be terminated due to lack of prior termination notice and on a date not falling on the last day of the month, the compensation in lieu of prior written termination notice due to the employee shall consist of an amount equal to the salaries owed him for the remaining days until the last day of the month in which the employee was dismissed.

Seniority pay is equivalent to the number of years or length of service (or any fraction thereof in excess of three months), multiplied by the highest usual, regular and monthly remuneration earned during the last year or during the length of services, if lower. The amount of such compensation may not be lower than a month's salary.

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<sup>4</sup> Section 226 of the Employment Contract Law establishes that: "The employee may consider the contract terminated if he/she suffers a loss or injury, as a result of the establishment transfer, which justifies the reported act under the provisions of section 242. For such a purpose, it shall be worth taking into account all those cases in which the transfer causes a change in the purpose of the establishment, an alteration of the duties, tasks, charge or employment, or such a separation of the several sections, agencies, or branches of the company so as to diminish the employer's personal liability."

<sup>5</sup> Proportional payment of the proportional thirteenth salary, proportional payment of non-enjoyed holidays, payment of thirteenth monthly salary on non-enjoyed holidays.

As regards seniority pay, the remuneration on which the calculation is based may not exceed the equivalent of three (3) times the monthly amount of the sum resulting from averaging all the salaries provided for in the collective bargaining agreement ("legal cap") applicable to the employee at the time of the dismissal (per the legal or conventional working day), excluding seniority. It is worth pointing out, however, that this legal cap has been declared unconstitutional by the Supreme Court of Justice of the Argentine Republic in re: "Vizzoti, Carlos A. v. AMSA S.A." The Supreme Court of Justice of the Argentine Republic held that the calculation basis could not be lower than 67% of the highest usual, regular and monthly remuneration earned by the employee during the last year of service or during the length of his/her service, if lower.

**As a result of the Emergency Law No. 25,561, the Government has ordered that all items forming part of fair dismissal compensation are to be duplicated. This duplication was then abated by law No. 25,972 to 80% of the additional amount calculated on the seniority pay. The emergency rule is still in force and sets forth that taking into account the number of employees to be dismissed, the Company shall give prior notice to the Ministry of Labor of its intention to avail itself of a special administrative procedure called "Procedimiento Preventivo de Crisis" in which both the Labor Ministry and the union representing the employees take part.** In order to avoid said procedure, many companies offer their employees an out-of-court negotiation as regards their termination.

The Employment Contract Law has provided for other special or increased compensation in the case of the dismissal of union delegates, pregnant women, marriage discrimination, lack of registration regarding (i) the labor relationship, (ii) seniority or (iii) the employee's actual salary, etc.

#### Obligations to the social security systems

From a social security viewpoint and in the event of a bulk transfer, any undetermined obligation of the seller shall not be transferred to the buyer provided prior notice of said transfer be served on the Administración Federal de Ingresos Públicos (Federal Tax Authority) ("AFIP") within the term of 15 (fifteen) business days prior to the execution of the Final Bulk Transfer Agreement, and it not be objected to within the term of three months subsequent to the transfer. In many cases, this notice causes the AFIP to audit the seller.

Should the notice not be served, the bulk transfer may become effective, but the seller and the buyer shall be jointly and severally liable for the seller's social security obligations undetermined during the term of the statute of limitations of the social security obligations, i.e., 10 (ten) years.

Should (i) the due diligence not be carried out during this term of three months, or (ii) the due diligence be carried out but no social security debt is determined, or if determined, it is paid by the seller, the seller and the buyer shall no longer

be jointly and severally liable as to the undetermined debt and the purchaser shall not be liable for any undetermined debt of the seller.

As regards social security obligations determined upon the bulk transfer, both the seller and the buyer shall be jointly and severally liable. Therefore, the buyer shall carry out a due diligence and demand the payment of any outstanding social security obligation.

Should there be no bulk transfer but a mere transfer of the establishment (e.g., sale of all its assets), the ECL sets forth that the seller and the buyer shall be jointly and severally liable irrespective of any agreement the parties might have entered into.

In the event of the transfer of the establishment, the new employee shall have previously complied with the pertinent registrations to be able to act as such in the future (e.g., registration with the AFIP, health insurance provider, labor risk insurance company, union, etc.).

The new employee shall pay applicable social security charges on account of his/her particular condition (activity, annual invoicing level). Social security coverage is provided for in Law No. 24,241. The law creates the so-called *Sistema Integrado de Jubilaciones y Pensiones* (Retirement and Pensions Comprehensive System) and grants the employees either of two options: (a) to contribute solely to the public system, or (b) to combine both systems (the public and the capitalization ones). To exercise the last option, the employee must be registered with a qualified *Administradora de Fondos de Jubilaciones y Pensiones* (Retirement and Pension Funds Managing Company) ("AFJP") authorized to act as such by the application authority. In general terms, the Argentine Social Security System allows men over sixty-five (65) years old and women over 60 (sixty) years old to have access to retirement benefits. In both cases, and in order to obtain the payment, retired employees shall provide conclusive evidence of having contributed to the social security system for thirty (30) years. Employers may freely contract additional retirement benefits (e.g., retirement insurance) for their employees.

Health insurance (medical coverage) and workers' compensation insurance are provided by entities particularly qualified to do so and controlled by the Government.

#### Obligations under the Collective Bargaining Agreements and towards the unions

Regulations involving collective bargaining agreements oblige all the employers of a certain activity to apply the collective bargaining agreements between the entrepreneurial board representing the pertinent sector and the legally recognized union fully authorized and qualified to represent the employers of said activity or craft.

Collective bargaining agreements are to compulsorily cover all employees of the activity, craft, rank or profession, pursuant to the personal application scope of the agreement, irrespective of whether they are affiliated or not to the union subscribing the pertinent agreement.

That is to say, unless the company has executed a particular collective bargaining agreement (enterprise collective bargaining agreement) with the pertinent legally recognized union (the one representing the main activity of the enterprise), the collective bargaining agreement to be applied by the employer shall be that executed with the union representing the activity carried out by the enterprise with the entrepreneurial board representing the employers of said activity.

In general, collective bargaining agreements regulate matters such as salary items, working days, special leave credits, employees' ranks, fringe benefits, etc.

Some collective bargaining agreements establish mandatory contributions to unions to be paid by the employer and/or the employee in order to finance the specific activity of the union or its projects (e.g., advertising, tourism, maintenance of clubs or recreation places, etc.). The buyer shall fulfill these duties.

As regards the transfer of the establishment, the new employer must continue applying the same collective bargaining agreement. Should the purchase imply merging the establishment with another that performs a different activity, it shall be worth analyzing the particular case in order to establish the main activity, if both activities may be split or not, and whether a conventional framework by the competent authorities is necessary or unnecessary.

# 7. Environmental liability

## 7.1 Civil Liability

### a. General Principles of National Constitution

Section 41 of the National Constitution provides that environmental damage entails the obligation to restore the damage caused, as determined by law.

As far as environmental liability is concerned, several national and provincial environmental laws have been enacted after the 1994 Constitutional amendment, for the purpose of adjusting environmental laws to the new circumstances and needs. For example, Hazardous Waste Law No. 25.675 (hereinafter referred to as the "HWL") stipulates specific laws and regulations related to the approval of the United Nations' Master Convention on Weather Changes, the Environment General Law No. 25,675 enacted in 2002 and other specific legislation that regulates either the above mentioned rules or some specific environmental aspects. Except for the above-mentioned rules, there are no special civil regulations regarding environmental liability. Consequently, any event not falling within the scope of the above mentioned rules shall be governed by the general principles of the Civil Code.

### b. General Principles of the Civil Code

Most legal commentators agree that the current notion of environmental damage often exceeds the scope of civil liability contained in the Civil Code. The Civil Code, for example, contains no provision for cleanup liability.

Under the general principles of the Civil Code, liability can be of a contractual or a tortious nature.

- contractual liability, a defaulting party is liable for damages arising from willful misconduct, negligence or unskillfulness, as defined by the Civil Code. However, the "defaulting" party is not liable if the damage is caused by natural disasters, acts of God, *or force majeure*, except if the "defaulting" party has assumed the consequences of any such act or force *majeure* or such act or force *majeure* has occurred because of the defaulting party's negligence. The "defaulting" party is responsible for consequential damages (*damnum datum*), loss of profits (*lucrum cessans*) and, under restricted circumstances, emotional distress (pains and sufferings). The statute of limitations to file an action is ten years starting from the date of the default.
- Non-contractual liability may apply in cases of environmental damage, under a strict liability concept. The statute of limitations to file an action is two years

starting from the date on which the damage occurred, or from the date on which the injured party became aware of the actual extent of the damage;

Under the strict liability approach, governed by Section 1,113 of the Civil Code, an "owner" or "guardian" of something that causes damage to a third party must pay a compensation therefor. The concept of "owner" or "guardian" extends to anyone who "creates a risk." To avoid any liability, the "owner" or "guardian" has the burden to prove that: (a) the third party has been negligent; (b) the victim has been negligent; or (c) the damages were a natural consequence or force *majeure*. The party is liable for any consequential damages, loss of profits, and emotional distress (pains and sufferings). *The* "owner" and the "guardian" are jointly and severally liable for the victim.

c. Civil Liability under the HWL

Civil liability under the HWL is a strict non-contractual liability. The generator of hazardous waste is jointly and severally liable for any damages caused.

The HWL provides that a hazardous waste is considered "risky". This consideration imposes certain additional obligations to generators, carriers, and final disposal or treatment centers that must be taken into account by the purchaser.

The HWL sets forth that a generator is not exempt from liability by merely proving that the third party has acted negligently. This provision modifies the general principle of strict liability provided for in the Civil Code. Furthermore, a waste generator cannot avoid liability by transforming or voluntarily abandoning a hazardous waste. No environmental authorization or certificate granted to the generator shall exempt an individual or entity from any of the liabilities established by the HWL. Notwithstanding the foregoing, under the Civil Code, the generator may avoid liability by proving third party liability.

The purchaser shall determine the existence or non-existence of hazardous waste within the facilities sought to be acquired before doing so. Liabilities shall be transferred from purchaser to seller depending on the structure of the acquisition (i.e., shares or bulk transfer). Please, refer to Section 1 hereof.

The carrier, the treatment company, the storage company and the generator of hazardous waste are jointly liable for each and every damage caused. **The HWL provides that a company shall not be exempt from liability by merely proving that the third party has acted negligently.** This provision modifies the general principle of strict liability provided for in the Civil Code. Furthermore, a company cannot avoid liability by transforming or voluntarily abandoning hazardous waste.

## 7.2 Criminal Liability

Environmental criminal liability in Argentina arises under the Criminal Code and the HWL.

### a. Criminal Code

Section 183 of the Criminal Code ("CC") imposes penalties ranging from fifteen days to one year of imprisonment, on any person who "destroys, ruins, causes the disappearance of or damages" any personal or real property or any animal, belonging to another person. Section 184 increases the penalty when such actions cause a disease or infection in any domestic animal or bird or are performed using poison or corrosive substances.

This generic criminal offense is not tailored to fit environmental concerns, but can be applied to some polluting behavior. For example, the action of changing or disturbing the nature of a thing could be construed by a criminal court as resulting in damage. In any case, this is a supplemental provision and applies only to cases lacking any more specific or serious criminal offense.

Specific environmental criminal offenses contemplated by the criminal code are as follows:

- Section 200 imposes penalties ranging from three to ten years of imprisonment on any person who poisons or pollutes drinking water, medicine or food. The penalties increase if a person dies as a consequence of such actions.
- Section 202 imposes penalties ranging from three to fifteen years of imprisonment on those spreading any contagious or infectious disease. Although this crime is not directly connected to any environmental criminal offense, the Federal Court of San Martín (Province of Buenos Aires) recently applied this provision to a case concerning the pollution of the Reconquista River.
- Section 203 establishes fines when no disease or death is caused and when the actions described in Sections 200 and 202 are committed with recklessness or negligently while carrying out a trade or profession or in violation of any regulation or ordinance. When no disease or death is caused, penalties range from six months to three years of imprisonment.

### b. Hazardous Waste Law

- Section 55 of the HWL imposes penalties ranging from three to ten years of imprisonment on anyone that contaminates or pollutes the soil, water, atmosphere or environment using hazardous wastes. Penalties are increased from ten years up to 25 years of imprisonment (which is the same

penalty established for homicide by the criminal code) if someone dies as a result thereof.

- Section 56 establishes penalties ranging from one month to two years of imprisonment in cases in which the actions described under Section 55 are performed with recklessness, negligently, unskillfulness or in violation of existing regulations or ordinances.
- When the HWL is violated by actions based on corporate resolutions, penalties are imposed on those directors, managers, statutory auditors or representatives who have adopted or implemented the resolution.

### **7.3 Managers and Officers' Liability**

Directors, managers, statutory auditors and representatives of the involved company shall be responsible according to their degree of participation in the decision-making process that has produced the damage (or risk).

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