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This booklet is intended to provide readers with basic information concerning issues of general interest. It does not purport to be comprehensive or to render legal advice. For advice about particular facts and legal issues, the reader should consult legal counsel. The information provided is as of 1 March, 2005. References to US Dollars will be "US\$" and references to Argentine Pesos will be "A\$".

MARVAL, O'FARRELL & MAIRAL was founded in 1923, and is the largest and one of the oldest law firms in Argentina. The firm has played a leading role in most of the major transactions arising out of the deregulation and privatisation of the Argentine economy. It is also the country's foremost patent and trademark agency.

The firm provides a wide range of legal services to diverse sectors of government, commerce and industry. The firm's broad client base includes public entities such as the Argentine government, the World Bank, the International Finance Corporation and the Inter-American Development Bank as well as local and multinational private sector enterprises including many Fortune 500 companies.

The firm places a strong emphasis on providing high quality legal services with a creative and innovative approach to attaining clients' goals. The firm has a highly professional and dedicated team of lawyers who can communicate effectively with clients not only in English and Spanish, but also in French, German, Portuguese and Italian. Although the firm practices Argentine law, its lawyers are well attuned to the complexities of multi-jurisdictional transactions, as the firm has taken part in many such transactions over the years.

MARVAL, O'FARRELL & MAIRAL has also made a substantial investment in leading edge information technology and it is the firm's policy to have an ongoing training program with in-house training sessions to ensure that its lawyers keep up to date with continually changing legal developments. At any given time several members of the firm will be on training assignments with leading U.S. and European law firms or universities.

MARVAL, O'FARRELL & MAIRAL aims to remain at the forefront of the legal profession in Argentina and in the region by adapting itself to the continually evolving needs of its clients and the community.



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1. Introduction

1.1 Background: Geography, Demography and Political System

1.1.1 *Geography and Demography*

The Republic of Argentina is comprised of 23 provinces and the federal capital: the Autonomous City of Buenos Aires. Located at the extreme south-east of the South American continent, Argentina is the eighth largest country in the world and the second largest in Latin America, covering some 3.8 million square kilometres (1.5 million square miles). Argentina has a population of approximately 37 million people, of which 12 million live in the city of Buenos Aires and the greater Buenos Aires area. The overall population density is about 14 persons per square kilometre.

Other important cities include Córdoba, Rosario, Mendoza, La Plata, San Miguel de Tucumán, Mar del Plata, Salta and Neuquén.

1.1.2 *The Constitutional and Political System*

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

The Constitution expressly provides for fundamental human rights such as equality before the law, freedom of speech, peaceful assembly, and the right to private property.

The executive branch has been the dominant branch at the federal level. The President is elected by direct vote and may serve a maximum of two consecutive, four-year terms. After the 1994 constitutional amendment a chief of cabinet is appointed by the President and can be removed either by the President or by Congress.

The Argentine Congress comprises two houses (a 72-seat Senate and a 257-seat Chamber of Deputies), which constitute the legislative branch. Senators are elected for six-year terms upon a staggered basis, with one-third of the Senate elected every two years. Deputies are elected for four-year terms upon a staggered basis, with one-half of the Chamber elected every two years. Congress has exclusive power to enact laws concerning federal legislation, including international and inter-provincial trade, immigration and citizenship, patents and trademarks. The Constitution entitles Congress to enact the Codes concerning civil, commercial, criminal, mining, labour and social security matters, which are applicable throughout the country.

The judicial system is divided into federal and provincial courts, and each system has lower courts, courts of appeal and supreme courts. The supreme judicial power of Argentina is vested in the Supreme Court of Justice, which has nine members who are appointed by the President with the consent of the Senate. Judges at all levels are appointed for life.

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

1.2 Information for the Foreign Investor. Impact of Recent Emergency Regulations

1.2.1 *Impact of Recent Emergency Regulations*

As described in more detail below, in December 2001 Argentina enacted emergency laws and regulations, which included a partial freeze on bank deposits, the suspension of payments on its foreign debt, the



abandonment of the convertibility of the Peso to the U.S. Dollar at the long-standing 1=1 rate (followed by a substantial devaluation of the Peso), the establishment of foreign exchange controls, restrictions on cross-border currency transfers, and the mandatory repatriation of most export proceeds.

Since then, the Government and its agencies have adopted numerous additional measures, which have implemented, expanded and, in certain cases, eliminated or limited the impact of that emergency legislation on foreign investment and economic activity in general. Given the fluid nature of the economic situation and the frequent changes in the regulatory environment, foreign investors are strongly encouraged to consult legal counsel to confirm the status of any of the legal issues discussed below.

1.2.2 Argentine Foreign Investment Regime

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

In general, foreign investors wishing to invest in Argentina, either by starting up new businesses or by acquiring existing businesses or companies, do not require prior government approval. The few exceptions to this general rule are mentioned below. However, if a foreign company's investment consists of holding equity of an Argentine company, the foreign company must register with the Public Registry of Commerce of the jurisdiction where the Argentine company is incorporated and comply with certain periodic reporting requirements. Please refer to Section 2.1.2 below for a more detailed description of these registration and reporting requirements, and to Section 6.3 below for a description of antitrust regulations.

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

Pursuant to the Foreign Investments Law, foreign investment is understood to be the influx of resources originating abroad, in the form of direct investment or portfolio investments, in order to develop an economic activity in Argentina. Direct investment mechanisms include investments by multinational companies through the incorporation of a branch or local subsidiary, a partial or total acquisition of an existing company, the acquisition of assets, or association with existing or newly formed companies. Indirect mechanisms include portfolio investments through the acquisition of quoted or unquoted shares of companies or other entities.

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

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

Until December 2001, there were no limitations on profit remittances (including dividends paid to non-residents) nor upon capital repatriation and, therefore, all investors enjoyed the right to repatriate profits and capital at any time. Following the establishment of exchange controls, this general rule established by the Foreign Investments Law was suspended and cross-border currency transfers for profit remittances and capital repatriation required the prior approval of the Central Bank. In January 2003, that restriction was lifted in the case of profit remittances. However, capital repatriation remains indirectly restricted due to the prohibition on



purchases of foreign currency with pesos obtained by non-Argentine residents from the sale of direct and portfolio investments in the non-financial private sector of more than US\$ 2,000,000 per month (the limit is US\$ 5,000 per month for investments in the financial sector).

Dividends, profit remittances and capital repatriation are in general not subject to tax in Argentina, except in certain specific circumstances. The Income Tax Law provides for a 35% withholding tax applicable to dividends and earnings distributed in excess of a company's net taxable income for the financial years immediately preceding the date of the distribution of such dividends and earnings.

1.2.3 Monetary Policy and Foreign Exchange

1.2.3.1 End of Convertibility and Pesification of Foreign Currency Obligations

Convertibility (which had kept the Peso pegged to the U.S. Dollar at a US\$ 1 = A\$ 1 rate) ended on 6 January, 2002 with the enactment of Law No. 25,561, Decree No. 214/02 and implementing regulations. Since then the Peso has devalued significantly (approximately US\$ 1 = A\$ 3 for the purchase of U.S. Dollars as of 1 March, 2004).

In February 2002, foreign currency denominated bank deposits were converted into pesos at an exchange rate of US\$ 1 = A\$1.40 whereas foreign currency denominated obligations were, with certain exceptions, converted into pesos at an exchange rate of US\$1 = A\$ 1. Certain types of obligations, including obligations of the public and private sectors that are governed by a foreign law and obligations related to foreign trade activities, were however exempted from this mandatory *pesification*. In March 2003, the Supreme Court ruled that the mandatory conversion into Pesos of a U.S. Dollar denominated deposit of the Province of San Luis at the Banco de la Nacion Argentina (a bank that is wholly owned by the Argentine Government) was unconstitutional and ordered its repayment in U.S. Dollars or its equivalent in Pesos calculated at the free market rate on the day of payment. In its decision, the Supreme Court gave 60 days to the parties to agree on the method and timing of the repayment and indicated that, if the parties failed to reach agreement, the court would determine them itself at the request of either party. Although court decisions are binding only on the parties to the specific case, Supreme Court decisions are generally followed by lower courts. The Supreme Court has not yet issued a decision in any case involving the mandatory *pesification* of foreign currency denominated obligations, which have been the subject of conflicting rulings by lower courts.

1.2.3.2 Elimination of Restrictions on Cash Withdrawals from Bank Accounts. Freeze of Bank Deposits

In November 2002, the Government lifted the restrictions on cash withdrawals from savings and checking accounts of funds deposited in such accounts as of 3 December, 2001 (commonly known as the *corralito*), which had been in place since December 2001.

On 9 January, 2002, the Government unilaterally extended the maturity of fixed-term bank deposits outstanding at that date. During 2002, this restriction was relaxed to a certain extent by subsequent measures, including the right to apply frozen deposits to the purchase of certain assets, the release of deposits of less than A\$ 10,000, and the possibility of exchanging them for certain new government bonds. On 28 March 2003, through Decree No. 739/03, the Government authorised banks to offer their customers the option of cancelling their fixed-term deposits in whole or in part. The mechanism for cancellation depends on the amount of the deposit (i.e. deposits under A\$ 42,000 can be credited in ordinary cash accounts, while those exceeding such amount can be converted in new fixed-term deposits with maturity terms of 90 or 120 days depending on the size of the deposit). The Central Bank also has allowed banks to offer better conditions to their customers, such as the immediate repayment in full of all deposits, or shorter maturity terms for the new deposits.

The February 2002 mandatory *pesification* described above did not restrict the right to denominate obligations in foreign currency and any such obligations generated since then should be enforceable.



1.2.3.3 Exchange Controls and Cross-Border Currency Transfers

After the repeal of convertibility and following a short period when the official exchange rate (at a rate of US\$ 1= A\$ 1.40) was combined with a free rate, on February 2002, the government established a single Free Exchange Market. Since then, the exchange rate fluctuates freely based on market forces, including purchases and sales by the Central Bank.

As indicated in Section 1.2.2 above, there are no restrictions on cross-border transfers for dividend and profit remittances.

The restrictions on cross-border transfers for payments of financial obligations that were enacted as part of the original exchange controls have been eased considerably. Principal and interest payments of financial obligations may be freely made, provided that the debt has been reported to the Central Bank. However, in the case of financial obligations that were incurred after September 2002, payments may be made without prior Central Bank approval only if the debt proceeds were transferred to Argentina and converted into pesos and payment occurs at least 180 days after those proceeds entered Argentina.

Debt securities that are denominated in a foreign currency, the terms of which do not provide for payments to be made exclusively in pesos, must be purchased with foreign currency in their initial offering.

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

Prior Central Bank approval is required for aggregate purchases of foreign currency per month for savings purposes in excess of US\$ 2,000,000, in the case of individuals and companies who are Argentine residents, and of US\$ 5,000 for any purpose other than those specifically exempted, in the case of individuals and companies who are not residents of Argentina.

As part of the exchange controls, financial entities were initially restricted from opening accounts in foreign currency. However, in October 2002, the Central Bank allowed financial entities to open savings accounts and receipt term deposits (but not checking accounts) for their clients in U.S. Dollars and, therefore, foreign currency funds held abroad that are transferred to Argentina may be deposited in such accounts, provided that they are not already subject to repatriation and conversion into pesos.

1.2.3.4 Repatriation of Export Proceeds

Exchange controls also reinstated the obligation to repatriate foreign currency funds arising from exports of goods and services. Such funds must be sold for pesos in the Free Exchange Market within a specific period (which in the case of goods depends on the type of product). Export proceeds that are applied to the repayment of export financing are exempted from repatriation, provided that the proceeds of such financing were originally transferred to Argentina and sold for pesos to the Central Bank. Also exempted are those activities that have been granted specific exceptions through specific regulation or contracts with the Argentine Government.

1.2.4 Investment Protection and Promotion

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

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



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

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

1.2.5 Membership in Regional Economic Trade Groups and International Organisations

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

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



2. Argentine Investment Vehicles

2.1 Principal Types of Business Entities

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

The main types of investment vehicle utilized by non-resident individuals and foreign companies are the branch, the corporation ("*Sociedad Anónima*") and the limited liability company ("*Sociedad de Responsabilidad Limitada*"). Formation procedures of the three vehicles are comparable. However, corporate governance procedures for a corporation or for the limited liability company are more onerous than for a branch.

The basic characteristics of the branch, the corporation and the limited liability company, according to Argentine law and the regulations of the *Inspección General de Justicia* of the City of Buenos Aires ("*IGJ*"), are detailed below. The IGJ only regulates and controls the companies in the City of Buenos Aires. However, since the City of Buenos Aires is the main jurisdiction for the incorporation of all types of companies, it should be assumed that sooner or later its trends and interpretations will be followed by many other jurisdictions.

2.1.1 Branch of a Foreign Entity

Any company duly organized and existing in accordance with the laws of its country of origin can set up a branch in Argentina. In principle, no minimum capital is required. However, registration of foreign off-shore companies in the City of Buenos Aires, has now been restricted by the IGJ.

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

- (i) inform and submit evidence of whether there is any legal restriction to carry out any of their principal activities in their jurisdiction of incorporation; and
- (ii) prove their operations outside of Argentina, at the time the request for registration is filed with the IGJ. If foreign entities do not evidence the foregoing, the IGJ may deny the request for registration of the applicable resolution, unless the foreign company demonstrates that it belongs to an economic group that fulfills the requirement.

Furthermore, branches registered with the IGJ must annually submit an accountant's certificate showing the composition and the value of its current and non-current assets located outside Argentina.

The parent corporation is liable for all the liabilities of the branch, as they are not considered to be separate entities. The legal representative of the branch is subject to the same liabilities of a corporate director under Argentine law.

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

Capital and Shareholders - At least two shareholders, which can be either corporate entities or individuals, are required to set up an SA. The law does not establish any minimum tenure by a shareholder, however, if there are only two shareholders, the IGJ is now requiring a "significant" tenure by the minority shareholder. Holding between 2 to 5% of the corporate shares satisfies this requirement. Minimum capital is A\$ 12,000 (i.e. approx. US\$ 4,000 at the present exchange rate). The IGJ can require for companies incorporated in the City of



Buenos Aires, a higher minimum capital, depending on the activity performed by the company. While the share capital must be fully subscribed upon incorporation, only 25% must be paid up on such shares, and the balance within two years thereafter. Contributions in kind of real estate, equipment or other non-monetary assets must be made in full at the time of subscription.

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

Registration - All SAs must be registered with the Public Registry of Commerce ("PRC") of the jurisdiction of incorporation (i.e., the City of Buenos Aires or any of the provinces). The IGJ is the Public Registry of Commerce of the City of Buenos Aires. Furthermore, foreign companies must record their articles of incorporation and by-laws with the Public Registry of Commerce, in order to be shareholders of an SA.

Management and representation - The SA is administered by a board of directors elected at a shareholders' meeting. An SA whose capital is A\$ 2,100,000 or more must have at least three directors. The directors and even the president of the company may be foreigners; however, the majority of the members of the board of directors must be Argentine residents. Directors need not be shareholders. The president, elected from amongst the members of the board, has full powers to act on behalf of the company and his/her authority in relation to third parties cannot be limited.

The board must meet at least once every three months. The majority of the members of the board must be present to have a valid quorum for deliberations. Resolutions are passed by the vote of the simple majority of the directors, unless a higher majority is required in the by-laws. In addition, board resolutions must be recorded in the appropriate minutes' book.

Shareholder Meetings - A shareholders' meeting must be held at least once a year in order to consider the annual financial accounts, and customarily will determine the distribution of profits and appoint directors and statutory auditors. Such shareholders' meetings are called ordinary shareholders' meetings. In addition, extraordinary shareholders' meetings must be held when decisions on certain specific issues are necessary (such as an increase of the corporate capital over a certain limit, redemption of shares, mergers and spin-offs, limits to the exercise of pre-emptive rights, issues of debentures or bonds, amendments to the by-laws and the dissolution of the company).

In order to participate in a shareholders' meeting the shareholders must notify the company of their attendance at least three days in advance of the respective meeting.

All SAs must have minutes' books in which minutes of shareholders' meetings are transcribed.

Supervision - Argentine companies are subject to the external supervision of the PRC and the internal supervision of controllers or supervisors ("*síndicos / comisión fiscalizadora*") appointed by the shareholders. The main faculties of each one are described in a) and b) below.

a) An SA must comply with a number of obligations related to the external supervision of the PRC, including the following:

- (i) file each year the annual financial statement and balance sheet with the PRC,
- (ii) file copies of notices convening shareholders' meetings or any other mandatory notices,



- (iii) file a copy of the resolutions corresponding to the company's annual accounts and financial statement,
- (iv) file any amendments to the company's by-laws and notify all appointments and changes in the composition of the company's corporate bodies,
- (v) submit corporate books and documents upon request from the PRC,
- (vi) cooperate with agents of the PRC in case of an audit of an SA.
- (vii) foreign entities, in order to be partners of an SA incorporated in the City of Buenos Aires, must inform and submit evidence of whether there is any legal restriction to carry out any of their principal activities in their jurisdiction of incorporation; and if the foreign company does not have the legal capacity to carry out its activity in its country of origin, the IGJ will not register it;
- (viii) foreign entities, in order to be partners of an SA incorporated in the City of Buenos Aires, must prove their operations outside of Argentina, at the time the request for registration is filed with the IGJ. If foreign entities do not evidence the foregoing, the IGJ may deny the request for registration of the applicable resolution as a foreign shareholder, unless the foreign company demonstrates that it belongs to an economic group that fulfills the requirement.

b) A company may also be subject to the supervision of a statutory supervisor ("*síndico*") or a supervisory commission ("*comisión fiscalizadora*"). In both cases these are elected by the shareholders meeting. Their number will depend upon the provisions of the by-laws of the company.

However, the law requires that at least one statutory supervisor be appointed if an SA has a capital of A\$ 2,100,000 or more. Furthermore, if the company publicly offers its shares, operates public concessions or services, performs capitalization or savings operations or operations which in general solicit funds from the public, the law requires the appointment of a supervisory commission ("*comisión fiscalizadora*") with at least three members.

The statutory supervisor(s) and the supervisory commission are required to carry out duties which include the following:

- (i) the quarterly examination of certain records, documents and books held by the company;
- (ii) they must be present at all board and shareholders' meetings and must submit a written report and opinion about the financial situation and accounts of the company to the company's annual shareholders meeting;
- (iii) they also have powers to convene shareholders meetings and they have a supervisory role during the liquidation of the company.

The *sindicatura* and the *comisión fiscalizadora* are subject to the same standard of loyalty and diligence as the directors and managers (please see below).

Promoters' and directors' liability during incorporation of an SA - During the incorporation of an SA, promoters and directors are jointly and severally liable for all of the SA's liabilities. Directors are only authorized to carry out activities related to the incorporation process and activities related to the company's purpose if these acts are expressly authorized by the by-laws. Once a company is registered, it may assume all the liabilities incurred in its name and the promoters and directors will be released from liability to third parties, although they may still be held liable to the company.



Audit Committee – SAs that publicly offer their shares must establish an Audit Committee. Such committee must be constituted by three or more members of the Board of Directors. The majority of such members must be independent, as such term has been defined by the *Comisión Nacional de Valores*, the Argentine Securities Commission.

Some of the Audit Committee's duties are:

- (i) to monitor the correct functioning and trustworthiness of the internal control systems and the administrative-accounting system of the SA, as well as the trustworthiness of all of the financial data or any other relevant information to be filed with the Argentine Securities Commission or the stock exchange entities;
- (ii) review the plans of the external and internal auditors, evaluate their performance and express an opinion on such matters at the time of presentation and publication of the annual financial statements;
- (iii) to monitor the use of policies related to information on the SA's risk management; and
- (iv) to disclose to the market complete information concerning the transactions where there may be a conflict of interests with the company's authorities or with a controlling shareholder.

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

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

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

Directors of a company have a duty: (i) to reveal any conflict of interest to the board of directors and statutory supervisor; (ii) to abstain from voting in any deliberation related to such conflict; and (iii) to refrain from competition with the company. Directors are jointly and severally liable for the negligent performance of their duties, or for violations of the law or of the by-laws or regulations of the company. Directors who file written objections promptly, and give notice to the statutory auditors before the proceedings are initiated against acts of the board of directors, are exempt from any consequences arising therefrom.

Directors and managers may be exonerated from liability to the company by a subsequent approval of the shareholders' meeting provided that they have not violated the law or the by-laws, and shareholders representing 5% or more of the company's capital do not object.

Shares - Shares must be issued in registered form. They may be preferred or common and may grant a maximum of five votes per share. The issuance of shares is subject to, *inter alia*, the following rules:

- a) ordinary shares must have identical economic rights regardless of any differences in voting rights;
- b) shareholders are entitled to pre-emptive rights with respect to the issuance of new shares. Such rights may be suspended in exceptional cases by the vote of a majority of the company's



- shareholders (mainly where shares are issued as payment in kind or by way of capitalization of the company's debt);
- c) a company may not issue new shares with multiple votes once it has obtained a listing for its shares on a stock exchange;
 - d) non-voting shares may only be issued as preferred shares. A right to vote is automatically granted when the company is in arrears in its payment of preferential dividends, or if the company has been withdrawn or suspended from listing;
 - e) preferred shares cannot have the benefit of both multiple votes and economic preferences at the same time.

Minority Shareholders' Rights - The rights granted to minority shareholders by the Argentine Companies Law are somewhat limited and consist of the following:

- a) in certain cases, the right to request that their shares be redeemed at the value reflected in the last balance sheet;
- b) the right of shareholders with at least 5% (or any smaller percentage provided in the by-laws) of the company's stock to require the board or the statutory supervisors to convene shareholders' meetings;
- c) the right of shareholders with at least 2% of the company's stock to request information from the company's statutory supervisors (*"sindicados"*); and
- d) the right to exercise special cumulative voting rights which permit minority shareholders to elect up to one third of the members of the board of directors.

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

Capital and partners - A minimum of two and a maximum of 50 partners, who may be individuals or corporate entities (other than SAs or Argentine limited liability companies with share capital (*"Sociedades en Comandita por Acciones"*)), may set up an SRL. Also in this case no minimum participation is required by law, but if there are only two quotaholders, the IGJ requires a "significant" participation of the minority quotaholder. Holding between 2 to 5% of the corporate quotas satisfies this requirement. Foreign corporate entities have been admitted as partners of SRLs provided that they are empowered to participate in such companies according to the laws of their jurisdiction of incorporation.

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

Partnership quotas must be of equal par value (A\$ 10 or multiples thereof) and entitle the holder to one vote each. Partners in an SRL are entitled to pre-emptive rights with respect to new issues of quotas. Transfers of quotas between the partners are not restricted by law, but may be restricted under the SRL's by-laws. Quotas may be transferred to third parties but existing partners may oppose the incorporation of such third parties as partners if they provide "just cause" as defined by law.

Registration - All SRLs must be registered with the Public Registry of Commerce of the jurisdiction of incorporation (i.e. the City of Buenos Aires or any of the provinces). Furthermore, foreign companies must



register their articles of incorporation and by-laws with the IGJ in order to be partners in an SRL. To obtain such registration in the City of Buenos Aires, foreign entities must (i) inform and submit evidence of whether there is a legal restriction to carry out any of their principal activities in their jurisdiction of incorporation; and (ii) prove their operations outside of Argentina, at the time the request for registration is filed with the IGJ. Regarding point (i) if the foreign company lacks legal capacity to carry out its activities in its country of origin the IGJ will deny registration. In relation with the requirement (ii), if the foreign company does not have substantial operations outside Argentina, the IGJ may deny the request for registration, unless the foreign company demonstrates that it belongs to an economic group that fulfills the requirement.

Management and representation - The partners must appoint one or more managers to manage and represent the company. These managers have the same rights and duties as directors of SAs and their powers of representation may be individual or joint. Managers need not be partners themselves.

Partners' meetings - SRL by-laws normally contain the rules for adopting resolutions, therefore, unless the by-laws provide otherwise, resolutions may be passed in writing without the need for holding a meeting. If the company's capital is A\$ 2,100,000 or more, the partners must hold an annual meeting each year to consider the financial accounts of the previous year and in such cases must follow the rules set out for shareholders' meetings of SAs.

Supervision - The appointment of a statutory supervisor or the creation of a supervisory committee is optional for SRLs unless their capital is A\$ 2,100,000 or more in capital, in which case one or more statutory supervisors or a supervisory committee must be appointed. When statutory supervisors or a supervisory committee are appointed, the rules for SAs generally apply.

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

Minority Rights - There are no specific minority holders rights for SRLs, however every partner has the right to (i) request any information he/she deems relevant, unless a statutory supervisor or supervisory committee has been appointed, and (ii) request, in certain cases, early redemption of quotas.

2.1.4 *Mergers and Spin-offs*

2.1.4.1 *Mergers*

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

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

The provisions of Argentine Companies Law are applied in the same manner to both types of merger.

Preliminary Commitment to Merge - The rules regarding merger procedures require that a preliminary agreement (the "PCM") be entered into between all the companies involved in the merger. The PCM must contain:

- (i) the reasons for the merger;



- (ii) special merger balance sheets for each company, together with an auditor's report. If the company has a statutory supervisor, he/she must also prepare a report. These reports must be prepared using identical valuation criteria;
- iii) the equity exchange ratio, indicating the relevant equity (whether quotas or shares) that the merging companies' partners or shareholders will receive in the new or surviving company;
- (iv) any management agreements and/or guarantees given to ensure performance of normal activities until the merger is duly registered at the Public Registry of Commerce.

The PCM and the special merger balance sheets must be approved by the organs of governance (i.e., boards of directors or managers, as the case may be) and by shareholders or partners of the merging companies.

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

Creditors who oppose the merger must file an objection to the merger proposals within 15 days of the publication of all the relevant notices. The filing of an objection does not prevent the merger, but execution of the Final Merger Agreement (as defined below) will be suspended for a further period of 20 days after the initial 15 day period has expired. This is to allow opposing creditors who are not paid off or whose debts are not duly secured by the merging companies, to obtain judicial liens. If creditors are not sufficiently secured or paid, a judicial claim may be filed by the creditor, utilising the more expeditious summary proceedings.

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

Withdrawal rights must be exercised within 5 days following the adjournment of the meeting at which the resolution was adopted in the event the dissenting shareholder voted against the resolution, or within 15 days following such adjournment if the dissenting shareholder did not attend the meeting.

The exercise of withdrawal rights will entail modifications to the merger balance sheet and may also alter exchange ratios.

Final Merger Agreement - Once the 15-day period for objection by creditors has elapsed and no objection has been filed, or once creditors who have filed an objection have been satisfied, the Final Merger Agreement ("FMA") may be executed. It must contain:

- (i) each merging company's resolution approving the merger;
- (ii) a list of the partners or shareholders who have exercised their right of withdrawal and the portion of capital they represent in each company;
- (iii) a list of opposing creditors whose credits have been secured and who have obtained judicial liens; in both cases, descriptions of the claims and any preliminary injunctions obtained must be included; there must also be a list of creditors who have been paid, together with a brief report of their impact on the special merger balance sheets.
- (iv) the special merger balance sheets and a consolidated balance sheet of the merging companies.



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

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

2.1.4.2 Spin-offs

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

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

The companies to which assets and liabilities have been transferred then issue shares to the shareholders of the company that has spun-off the assets and liabilities.

Procedure - As in the case of mergers, the procedure for spin-offs requires that the relevant company approve the operation, the spin-off balance sheets, the issue and distribution of shares and the relevant amendments to the by-laws.

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

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

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

2.2 Other Forms of Investment Entity

2.2.1 Partnerships

Generally speaking, partnerships are entities in which the participants' liability is unlimited. Partnerships in Argentina generally take the form of a *Sociedad Colectiva*. All the partners are jointly and severally liable for the obligations of the partnership, once its assets have been exhausted. No minimum capital is required and liquidation of partnerships requires unanimous consent. Argentine corporate entities cannot, in general, participate in this kind of partnership, and these entities are therefore seldom used in major transactions or investments.



2.2.2 Joint Ventures (UTE)

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

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

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

A UTE may only be adopted in temporary associations such as the development of specific works or services (e.g. oil and gas exploration and drilling operations and public works). Decisions in UTEs are taken only by the unanimous vote of members, unless the agreement provides otherwise. Members of the UTE are not subject to joint and several liability unless otherwise provided for by the UTE agreement.

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

2.2.3 Trusts

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

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

The trust agreement must comply with the following requirements:

- (a) it must identify the assets subject to the agreement; if such identification is not possible, it must contain a description of the conditions and characteristics that those assets must have;
- (b) the agreement must stipulate the way in which other goods may be added to the trust;
- (c) it must specify the term or condition to which the trust ownership is subject, and shall never be effective for more than thirty years from the date of its creation, unless the beneficiary is an individual without legal capacity, in which case it may be in effect until the beneficiary's death or until termination of his incapacity;
- (d) it must specify to whom the assets will be allocated upon expiry of the trust; and
- (e) the trustee's rights and obligations and the specific manner in which the trustee may be replaced upon termination of his/her office.



Any individual or legal entity may be appointed as trustee. However, only financial entities duly authorized to act as such under the respective laws, and corporations authorized by the Argentine Securities Commission may publicly offer their services as trustees.

If the property given in trust is inscribed in a public registry, the relevant public registrars will record the assets in the trustee's name.

Pursuant to Argentine law, assets held in trust form a separate estate from the estates of the trustee and the settler. They therefore will not be affected by any individual or joint actions brought by the trustee's or settler's creditors, except in the case of fraud by the settler. The beneficiary's creditors may exercise their rights over the proceeds of sale of the assets held in trust and be subrogated in the beneficiary's rights.

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

In this case, the beneficiaries are the holders of certificates evidencing a trust ownership interest or of debt securities secured by the assets held in trust. Such interest certificates and debt securities are deemed to be "securities" and may be the subject of a public offer.

2.3 Certain Regulated Activities

2.3.1 *Financial Institutions*

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

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

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

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

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

The other financial institutions are limited to the following specifically authorised transactions:



- (i) granting of loans: investment banks may grant medium to long term loans and short term loans to a limited extent; mortgage banks and savings and loan companies may grant loans for the acquisition or construction of real estate and the refinancing of mortgages; finance companies may grant loans for the purchase of goods in instalments and other personal loans; and the *Cajas* may grant short to medium term loans to small companies and individuals;
- (ii) granting of guarantees: mortgage banks and savings and loan companies may only do so when the guarantee is related to a transaction in which they participate;
- (iii) factoring and discount transactions: finance companies are the only entities that can enter into these transactions in an unrestricted manner. Investment banks may perform discount transactions only when they are related to a deal in which they participate;
- (iv) issue of securities: investment banks have a broad authorization to issue bonds, negotiable obligations, certificates of participation in loans and other negotiable instruments. Mortgage banks are allowed to issue notes with mortgage guarantees while finance companies may issue letters of credit and promissory notes;
- (v) transactions involving securities: both investment banks and finance companies may act as depositaries for investment funds, provide portfolio management services and participate as underwriters and placement agents;
- (vi) leasing transactions: investment banks and finance companies are the only entities allowed to enter into such transactions;
- (vii) foreign funding: may be obtained by investment banks and may also be obtained by mortgage banks and finance companies with an authorization from the Central Bank.

2.3.1.1 *Operating Restrictions*

The FIL prohibits financial institutions from:

- (i) developing any non financial activity (i.e. commercial, industrial, agricultural) directly or through other companies unless expressly authorised by the Central Bank, which shall grant authorization provided the liquidity and solvency of the financial institution will not be affected. However, the Central Bank has relaxed this restriction to allow the development of certain specific activities, such as management of mutual funds, financial trusteeships, advice on financial and investment transactions, etc) without Central Bank's prior authorization;
- (ii) establishing charges over their assets without the prior authorization of the Central Bank;¹
- (iii) accepting their own capital stock as a guarantee;
- (iv) conducting business with directors or related companies in a manner that would not be considered at arms' length; and
- (v) with the exception of commercial banks, issuing drafts or making transfers from one market to another.

¹ The Central Bank has issued resolutions authorizing cash or securities to be used as collateral for certain transactions involving futures, options and other derivative products.



2.3.2 Insurance Companies

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

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

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

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

When a company wishes to operate new lines of insurance it must submit a specific application to the NISA. When applying for such authorization it must file a detailed plan for each class of insurance (technical characteristics of the insurance policy, justification for the amounts to be insured and the premiums to be charged, technical reserves, forms and policy terms). No changes to such insurance plans may be made without the approval of the NISA.

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

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

While Argentine risks may only be insured by the types of entities described above, it is possible for an Argentine company to reinsure local risks abroad. Foreign companies reinsuring Argentine risks must be registered with the NISA or operate through reinsurance brokers registered with the NISA. Local reinsurers must be authorised by the NISA.

2.3.3 Pension Funds

2.3.3.1 Individual Capitalisation Pension System

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

All workers who opt to participate in the capitalisation system make monthly contributions equal to 11% of their salaries, which are deposited in personal retirement accounts managed by pension funds ("*Administradoras de Fondos de Jubilaciones y Pensiones*" or "*AFJP*") of their choice. The contributor is considered the owner of the contributed funds and is entitled to receive benefit payments from such funds upon reaching retirement age. Those workers who do not opt to use the capitalisation system deposit their monthly contribution with the state system.



Employers' social security contributions amount to 18% of the monthly salary paid to the employee up to a ceiling fixed by decree and revised each year. The present ceiling is A\$ 4,800 per month. No social security contributions are payable in respect of that part of an employee's salary that exceeds the ceiling. The contributions are payable to the State in order to be used to fund retirement and pension benefits paid under the "*Régimen de Reparto*".

2.3.3.2 AFJP Regulations

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

Under the capitalisation system, workers may select from among existing AFJPs on the basis of their investment performance and fees. In order to safeguard the funds managed by the AFJPs, the Pension Funds Law requires that assets and liabilities of the AFJPs be legally and administratively segregated from such funds, which are considered the property of the contributors and the beneficiaries. Accordingly, if an AFJP becomes insolvent, the company may be liquidated without impairing or depleting such funds.

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

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

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

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

The regulations further require AFJPs to achieve a minimum rate of return equal to the lesser of (a) 70% of the average rate of return of all AFJPs or (b) the average rate of return of all AFJPs minus two hundred basis points. If the rate of return of an AFJP falls below the minimum, such AFJP must make up the difference to contributors with the Security Reserve funds.

Fund investments are also subject to diversification requirements. The purpose of these requirements is to:

- (i) increase the funds' security;
- (ii) prevent companies from becoming dependent on pension funds to obtain financing;
- (iii) prevent AFJPs from dominating the companies in which they invest; and
- (iv) prevent AFJPs from investing an excessive proportion of their assets in a single industry group.



2.4 Capital Market Regulations

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

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

In order to be engaged in a public offering of securities, issuers and other entities involved in the public offer must be registered with the CNV. The Securities Law provides that only securities which have identical rights in each class may be publicly offered. CNV approval of a public offer means only that there has been compliance with the regulations applicable to the offer and does not provide any assurance with respect to the subsequent performance of the particular security as an investment. The approval of a particular issue does not apply to subsequent issues of the same or to other types of securities of an issuer. However, once that issuer has been authorised to make a public offer of securities, a simpler and more accelerated procedure is available for subsequent issues.

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

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

The Buenos Aires Stock Exchange has three different trading systems: the traditional auction system, a computer assisted trading system (SINAC), and a continuous electronic market, similar to, but separate from, the MAE. Equities, options and futures are traded exclusively on the Buenos Aires Stock Exchange, and Argentine government and corporate debt securities may be traded either on the Buenos Aires Stock Exchange or on the MAE. Commodity options and futures are traded in special markets which are not as yet highly developed.



The Buenos Aires Stock Exchange also has four different trading sections: the general section, the special section, the new projects section, and a recently created section for companies involved in e-commerce, telecommunications, internet, electronics, biotechnology and science.

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

As a general rule, the Securities Law and the regulations of the CNV provide that any kind of security may be issued and publicly offered, provided that such securities are issued in series and that the securities within each series have the same characteristics.

The regulations of the CNV set out specific procedures regarding the registration of debt securities, asset backed securities, pooled funds or investment funds, direct investment funds and money market funds.

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

Companies incorporated in foreign countries may offer their securities to the public pursuant to the same conditions and requirements as those applicable to Argentine issuers, or alternatively, issue Argentine depository receipts (*"CEDEARS"*) representing their securities, through sponsored or non-sponsored programs in accordance with specific CNV requirements. The CNV may establish less onerous requirements for companies which have securities listed in countries that have cooperation agreements with Argentina or, in the absence of such agreements, where the CNV determines that existing regulations afford reasonable protection for domestic investors and ensure adequate disclosure of information.

Investors in the securities market consist of individuals, companies, financial trusts, and institutional investors such as investment funds and pension funds (*Administradoras de Fondos de Jubilación y Pensión* or *"AFJP's"*). There are no particular limitations applicable to the negotiation of securities by individuals or companies, except those mentioned below. Investment Funds and AFJP's have limitations provided by their regulatory laws and rules.

As a consequence of the difficult political and economic situation following the events of December 2001 when the elected President resigned, several measures have been taken, in particular limitations to financial operations; amendments made to the foreign exchange regime; and new rules regarding foreign exchange transactions have been introduced. Therefore, since the enactment of these rules, transfers of U.S. Dollars from Argentina have been significantly restricted, and this has had a considerable impact upon capital markets transactions.

2.4.1 *Insider Trading*

There are several CNV regulations aimed at preventing the misappropriation of non-public information and to guarantee fair dealing in the securities market. The CNV must be informed of any facts that may affect the purchase and sale of securities. In addition, it imposes a duty on certain persons to keep secret all information which has not been publicly disclosed and which may have an impact on the price of securities. Furthermore, the use of privileged information for the benefit of the persons who have access to such information or for the benefit of third parties is forbidden.

The CNV also requires that controlling shareholders, directors, managers, statutory auditors, members of supervisory committees and any other person who by reason of their position, activity or relationship obtains



information, must take all the measures necessary to prevent subordinates or third parties from gaining access to such privileged information. Such persons must inform the CNV of any fact or circumstance that may be deemed a violation of the duty of confidentiality or a violation of the prohibition against the use of privileged information.

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

2.5 Anti-Money Laundering Regulations

In May 2000, the Government enacted Law No. 25,246, which is aimed at preventing, detecting and punishing money laundering activities in Argentina. This law is implemented through Decree No. 169/2001 issued by the Government in February 2001, and amended by Decree No. 1500/2001 issued in November 2001, together referred to as the "Anti-Money Laundering Law". Prior to the enactment of the Anti-Money Laundering Law, the Central Bank, the Securities Commission (*Comision Nacional de Valores* or "CNV") and the over-the-counter market (the *Mercado Abierto Electronico* or "MAE") had issued their own regulations regarding money laundering prevention within their respective ambits of authority.

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

2.5.1 Penalties

In the case of money laundering, Criminal Code penalties range from imprisonment from 2 to 10 years and fines of two to ten times the value of the assets laundered. In the case of concealment, Criminal Code penalties range from 6 months to 6 years. Persons who are found guilty of money laundering or concealment while performing an activity that requires a special license may have that license revoked for a period of 3 to 10 years. The courts may seize any laundered assets. In addition, fines may be imposed on those who fail to comply with the information requirements set out below.

2.5.2 Enforcement

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

2.5.3 Information Requirements

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

- (i) obtain from their customers documentation that proves their identity, domicile and other basic data to be determined by implementing regulations to be issued by the Unit;



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

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



3. Tax Considerations

3.1 Income Tax

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

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

Non-resident individuals or legal entities without a permanent establishment in Argentina are taxed only on income from Argentine sources. Pursuant to the ITL, income arising from:

- (i) assets located, placed or used in Argentine territory,
- (ii) the performance of any act or activity in Argentina that produces an economic benefit, and
- (iii) events occurring in Argentina

will be considered to be income arising from an Argentine source.

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

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

In principle, all ordinary and necessary expenses incurred in earning taxable income are tax deductible (such as interest, salaries, taxes, etc.). Expenses, in the same manner as income, are generally allocated to the fiscal year in which they accrue. An exception to this principle are expenses incurred by Argentine companies resulting in Argentine – source income for (A) foreign individuals or entities with whom those Argentine companies are related or (B) foreign individuals or entities set up, located or domiciled in low tax jurisdictions, whether related or not. In such cases, the expenses can be deducted if they are paid before the due date for filing the tax return corresponding to the fiscal year in which the expenses were incurred.

Argentine Income Tax Law provides thin capitalization rules which establish certain limits to deduct interest. Interest on debts (except the ones that, in general terms, have a withholding rate of 35%) for loans incurred by Argentine companies (except from financial entities subject to Law No. 21,526) with non-resident individuals or entities that are related to them shall not be deductible in the proportion corresponding to the debt in excess of twice the net worth of the Argentine Company as of that date. Amounts of interest not subject to deduction are deemed to be dividends.

3.1.1 *Loss Carryforward*

Losses incurred during any fiscal year may be carried forward and set off against taxable income obtained during the following five fiscal years. Losses arising from the sale or other disposal of stock and other forms of equity such as mutual fund shares, may only be set off against capital gains arising from the disposal of these



types of assets. Losses from foreign sources may only be set off against income or capital gains arising from foreign sources.

3.1.2 Rates of Income Tax

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

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

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

However, the distribution of dividends, income or remittances of profits may under certain circumstances be subject to tax. The ITL provides for a 35% withholding tax to be applicable to the amount of dividends and earnings distributed in excess of a company's net taxable income. The income of individuals is subject to tax upon a sliding scale which begins at the rate of 9%, increasing to 35% on taxable income exceeding A\$ 120,000.

3.1.3 Filing and Payment Requirements

All taxpayers must file an annual tax return before the beginning of the fifth month following the end of their fiscal year.

Corporations and branches of foreign companies are required to make ten monthly pre-payments, commencing the sixth month of any given fiscal year. The amount of the pre-payments is calculated on the basis of the tax paid in the preceding fiscal year.

3.1.4 Transfer Pricing Provisions

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

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

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

Pursuant to the provisions relating to transfer pricing, any transactions between related companies or unrelated companies located in low-tax jurisdictions are deemed not to be at arm's length, unless evidence to the contrary is provided. The Argentine taxpayer is only able to deduct payments made to a related company located abroad or to an unrelated company located in a low tax jurisdiction, to the extent that it can establish that the price paid is one that would have been paid in an arm's-length transaction. To the extent that the taxpayer cannot prove the foregoing, the tax authorities can make transfer pricing adjustments to the income and expenses allocated between the parties.

In order to establish that the terms of the transaction are equivalent to an arm's length transaction ("arm's length compliance"), Argentine businesses must submit special reports containing detailed information including data and supporting documentation.



The law provides for different methods (such as comparing prices, margins, levels of profit, etc. with transactions between unrelated parties) in line with OECD guidelines that can be used by the Argentine taxpayer to establish “arm’s length compliance”. Taxpayers are required however to employ the method that best reflects the economic reality of each transaction.

However, the export of cereals, oil seeds, ground products, hydrocarbons or other goods with a known price in transparent markets, where an international intermediary that is not the effective receiver of the goods participates in the transaction, the best method deemed to assess the Argentine-source income is the quotation value of the good in the transparent market on the day the goods are loaded, without considering the price agreed with the international intermediary. If the price agreed with the intermediary were higher, this price must then be used. This method can be disregarded if some requirements are met. This method could be also applicable to other exports of goods if the international intermediary does not fulfill certain requirements.

3.1.5. *Foreign Exchange Gains and Losses*

To determine Argentine income tax, transactions must be valued in Argentine currency. Consequently, fluctuations in foreign exchange rates generate foreign exchange gains or losses. Foreign currency transactions are taxed following the method of yearly balance revaluation or estimating the differences between the last fiscal revaluation and the amount paid or collected. Deposits, credits and debts in foreign currency shall be valued according to the applicable foreign exchange rate (buyer or seller) of the *Banco de la Nación Argentina* at the closing date of the fiscal year including interest accrued to that day.

The Income Tax Law provides that the foreign exchange spread arising from converting a debt into another currency is disregarded for tax purposes, except where the debt is paid or novated.

3.2 Withholding Tax on Non-Residents

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

The effective rates of withholding tax upon payments to non-residents are indicated below. In all cases mentioned, should the local payer assume the obligation to pay the tax for the non-resident recipient, the net amount payable must be grossed-up in an amount equal to the tax assumed by the Argentine taxpayer (the approximate percentage gross-up is shown in parentheses):

- (i) amounts paid pursuant to technical assistance agreements, engineering or consulting services that the authorities consider unavailable in Argentina, provided such contracts are registered in compliance with the Transfer of Technology Law: 21% (26.58%);
- (ii) contracts registered in compliance with the Transfer of Technology Law and not included among those mentioned above: 28% (38.89%);
- (iii) copyright royalties paid pursuant to agreements which comply with the requirements of the Copyright Law: 12.25% (13.96%);
- (iv) interest on loans obtained abroad: 35% (53.85%), unless the beneficiary is a bank or financial institution incorporated or located in countries not deemed a low tax jurisdiction or in a jurisdiction that have entered into agreements of exchange of information with Argentina and, besides, is a jurisdiction where bank secrecy, secrecy pertaining to stock exchange transactions or of other kind cannot be alleged in accordance with its local provisions upon a request by the respective tax



authorities; these financial entities are those under the supervision of the relevant Central Bank or equivalent agency: 15.05% (17.72%);

(v) payments to non-residents working on a temporary basis in Argentina for a period not exceeding six months: 24.5% (32.45%);

(vi) rental payments on moveable property: 14% (16.28%);

(vii) rental payments on real estate: 21% (26.58%);

(viii) proceeds from the sale of any type of property: 17.5% (21.21%); and

(ix) general withholding rate for income, other than dividends, not specifically mentioned above: 31.5% (45.99%).

In cases (vii) and (viii), the foreign taxpayer may opt to pay tax at the rate of 35% on net income, which is calculated by deducting the actual expenses incurred in obtaining the taxable income from the gross amount. The taxpayer must, however, obtain an authorization from the tax authorities to do this.

Argentina, along with a number of other countries, is a party to tax treaties which impose ceilings on withholdings of certain taxable income, which may reduce the rates of the withholding tax indicated above (please see paragraph 3.10).

3.3 Tax Exemptions for Foreign Entities

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

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

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

3.4 Tax on Presumed Minimum Income

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

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

Any tax payable hereunder is allowed as a credit toward normal corporate income tax. Furthermore, to the extent that this minimum tax cannot be credited against normal corporate income tax, it may be carried forward as a credit for the following ten years.



3.5 Value Added Tax (VAT)

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

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

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

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

The "tax debit" is the tax corresponding to sales made by the taxpayer or services rendered by him/her. It is obtained by applying the tax rate to the price of such sales or services.

The "tax credit" is the tax indicated in the invoices of the suppliers of goods or services contracted by the taxpayer.

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

Since exports of goods are subject to VAT at a 0% rate, exporters may utilize the VAT charged to them as a "fiscal credit", if such VAT is actually connected to any stage of the production or sale of the exported goods.

3.6 Turnover Tax (Tax on Gross Income)

Turnover tax is a local tax levied on gross income. Each of the provinces and the Federal District of Buenos Aires apply different tax rates; however, most provinces apply a 1% rate on agricultural, cattle breeding and mining activities, 1.5% on industrial activities, 3% on trade or services in general, and 5.5% on financial activities. The tax is levied on the amount of gross income resulting from business activities carried on within the respective provincial jurisdictions. The provinces have signed an agreement ("Multilateral Agreement") to avoid the double taxation of activities performed in more than one province. Under this agreement, gross income is allocated between the different provinces applying a formula based on income obtained and expenses incurred in each province.

3.7 Stamp Tax

Stamp tax is a local tax levied on public or private instruments, executed in Argentina or when executed abroad, when their effects are produced in one or more relevant jurisdictions within Argentina. The definition of "effects" varies in the different local tax codes. However, most codes include within the definition acceptance, protest, negotiation of the agreement, performance and the institution of enforcement proceedings for compliance. In general, this tax is calculated on the economic value of the agreement.

3.8 Personal Assets Tax

The Personal Assets Tax Law No. 23,966, as amended, provides that all individuals residing in Argentina are subject to a tax upon their worldwide assets. Individuals not residing in Argentina are only liable for this tax



upon their assets located in Argentina. Shares, negotiable obligations and other securities are only deemed to be located in Argentina when issued by an entity domiciled in Argentina.

In general, the tax on personal assets is 0.5% of the value of the assets in excess of A\$ 102,300 owned by the taxpayer on 31 December of each relevant fiscal year, which rate is increased to 0.75% where the value of the assets subject to the tax exceeds A\$ 200,000.

3.8.1 *Negotiable Obligations*

There is an irrefutable presumption that certain securities (in particular negotiable obligations) issued by an Argentine company directly owned (*"titularidad directa"*) by a foreign legal entity are deemed to be owned by individuals who are Argentine residents and are, therefore, subject to the tax on personal assets at the rate of 1.5 %. The Argentine company is the entity which is liable for the payment of the tax. This presumption does not however apply if one of the following conditions is satisfied:

- (a) the securities representing the foreign entity's capital are considered to be registered shares according to the law in force in the jurisdiction of incorporation,
- (b) pursuant to its by-laws or to its juridical nature (*"naturaleza jurídica"*), the foreign entity (i) does not, as its principal activity, invest outside the jurisdiction of its incorporation, or (ii) is not prohibited from performing certain transactions expressly indicated in its by-laws or in the applicable regulatory framework in the jurisdiction of its incorporation, or
- (c) the owner of the Argentine securities has its principal office located in a country whose central bank or equivalent authority has adopted the international standards of supervision established by the Basle Committee and is one of the following entities: (i) an insurance company, (ii) an open-ended investment fund or a pension fund or (iii) a bank or a financial entity,
- (d) the Argentine securities in question are negotiable obligations which have been authorized for public offering by the Argentine Securities Commission (*"Comisión Nacional de Valores"*) and are listed in securities markets in Argentina or abroad.

3.8.2 *Shares and Equity Interests*

There is an irrefutable presumption that shares and equity interests in Argentine corporations owned by any kind of foreign entity, regardless the satisfaction or not of the conditions (a), (b), (c) and (d), described above, are owned by an individual domiciled abroad and are, therefore, subject to the tax. The rate applicable is 0.5%. The Argentine issuer company is liable for the payment of such tax and it is entitled to seek recovery from the foreign entity.

Certain conventions for the avoidance of double taxation entered into between Argentina and other countries may prevent the applicability of the tax in both 3.8.1 and 3.8.2 above.

3.9 Tax on Credits and Debits in Bank Accounts

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



Transfers and deliveries of funds also fall within the scope of this tax, regardless of the person or entity that performs them, when those transactions are made through organised systems of payment in substitution for checking accounts.

The tax law and its regulations provide several exemptions to this tax. For example, it does not apply to debits and credits relating to salaries, to retirement and pension emoluments credited directly by banking means and withdrawals made in connection with such credits, to credits in checking accounts originating from bank loans, and to transfers of cheques by endorsement.

The general rate of the tax is 0.6%. An increased rate of 1.2% applies in cases in which there has been a substitution for the use of a checking account. Decree No. 534/2004 provides that the owners of bank accounts subject to the general rate of the tax of 0.6% may consider 34% of the tax paid upon credits to such bank accounts as a tax credit. The taxpayers that are subject to the tax at the rate of 1.2% may consider 17% of all tax paid under this heading as a credit. Such amounts can be utilized as a credit for Income Tax and the Tax on Minimum Presumed Income. The amount considered as a credit is not deductible for income tax purposes.

3.10 Tax Treaties

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

The following table sets out the maximum rates at which interest, dividends and royalties may be taxed in Argentina where the recipient is a resident of one of the countries listed below. The other countries with which Argentina has tax treaties but which are not mentioned in the table below do not set specific limits on taxes but establish (to avoid double taxation) which country has jurisdiction to impose taxes in certain circumstances:

Country	Interest	Dividends	Royalties
Australia	12 %	15%	15%
Austria	12.5%	15%	15%
Belgium	12 %	15%	15%
Canada	12.5%	15%	15%
Denmark	12 %	15%	15%
Finland	15 %	15%	15%
France	20 %	15%	18%
Germany	15 %	15%	15%
Italy	20 %	15%	18%
Norway	12.5%	15%	15%
Spain	12.5%	15%	15%
Sweden	12.5%	15%	15%
Switzerland	12 %	15%	15%
The Netherlands	12 %	15%	15%
The United Kingdom	12 %	15%	15%



4. Protection of Intellectual Property

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

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

4.1 Trademarks and Trade Names

Trademarks and tradenames are governed by Trademark Law No. 22,362 of 26 December 1980, together with its regulatory decree. The law provides that the ownership of a trademark and the right to its exclusive use are obtained by registration with the Trademark Office. Accordingly, registration, and not use, confers proprietary rights. For the purposes of the registration of trademarks, as of 9 April 1981, Argentina has adopted the International Classification of Goods and Services.

The duration of a trademark registration is 10 years, renewable indefinitely for periods of ten years provided the trademark has been used in connection with the sale of a product, the rendering of a service or as a tradename, during the five year period preceding each expiration date. Failure to use the trademark during the relevant five year period may subject it to cancellation.

The overriding principle of the law is good faith in dealing with and using trademarks. Renowned trademarks have been afforded special protection by Argentine Courts.

There is no obligation to record a trademark license agreement in connection with a trademark registration. There is no Registry of Licenses at the Argentine Trademark Office. However, it may be advisable to record the license in the official file of the trademark involved to make certain that the use of the trademark inures to the benefit of the trademark owner. This is advisable if the license is between unrelated companies and if there is some doubt as to whether it will be possible to prove that the mark was being used with the authorization of the trademark owner.

4.1.1 Preliminary injunctions

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

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

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

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



4.2 Patents - Utility Models

4.2.1 *Patents*

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

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

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

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

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

The following are in principle not patentable in Argentina: scientific theories, mathematical methods, literary or artistic works, aesthetic creations, plans, rules and methods for carrying out intellectual activities, games, economic and commercial activities, computer programs, and methods of diagnosis, surgical or therapeutic treatment applicable to humans or animals.

Patent applications must be published within 18 months after filing. Third parties may file observations regarding lack of novelty, industrial application or inventive activity of the invention. Requests for substantive examination of patent applications must be made within three years from their filing date. After the patent has been granted, the applicant must pay annual fees to keep the patent in force.

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

When a patent application comprises more than one invention, it may be divided by filing as many divisional applications as necessary, preserving the priority filing date. "Patents of Addition" for improvements of a patented invention are also provided by Law.

Patents and Utility Models may be assigned and licensed, in whole or in part. The assignment must be recorded at the National Institute of Industrial Property to be effective vis-à-vis third parties.

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



4.2.2 *Pharmaceutical Patents*

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

For pharmaceutical process patents, reversal of the burden of proof is available for products that complied with the novelty requirement by 1 January, 2000. In any event, the Argentine general rules of civil procedure also allow the judge to order a reversal of the burden of proof in those cases in which it is easier for the defendant to provide the evidence than for the plaintiff.

4.2.3 *Preliminary Injunctions*

A patent holder may apply for a preliminary injunction on the basis of both the TRIPS Agreement and of the Argentine Patent Law. For the injunction to be granted, the applicant must provide reasonably strong evidence showing that: a) the applicant is the patent holder; and b) there is a prima facie infringement or imminent infringement.

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

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

4.2.4 *Other Remedies*

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

4.2.5 *Utility Models*

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

Notwithstanding that the law provides that novelty is only required in Argentina, the enabling regulations under the law require absolute worldwide novelty. The Argentine Patent Office applies the latter criteria when dealing with applications. This conflict between legal dispositions has yet to be resolved by the Argentine Courts.

4.3 **Industrial Designs and Models**

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



A single registration may cover up to fifty (50) different examples of a single model or design, provided that all of them are homogeneous.

In the absence of prior publication or use in Argentina or abroad, a valid registration may be obtained for a term of 5 years, renewable for two further terms of five (5) years each. Renewals must be applied for not later than six months prior to the expiration of the respective period.

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

The owner of a model or design registration has the exclusive right to prevent third parties from industrially or commercially making use of the registered design or imitations thereof. Court actions may be instituted in the Federal Courts.

Article 28 of the Argentine Models and Industrial Designs Law establishes that "If an industrial model or design registered in accordance with the present Decree has also been the subject of a registration under Law No. 11,723 (Copyright Law) the author may not invoke both statutes simultaneously in legal defence of his/her rights."

Therefore, if a conflict arises, it is necessary to decide if a product is to be defended as an industrial model or as a work of art protected by the Copyright Law because both protections will not be simultaneously granted by Argentine courts.

4.4 Domain names

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

Responsibility for the "ccTLD" in Argentina falls under the authority of the Ministry of Foreign Affairs. The Ministry has subcontracted specialised staff, who operate under the name of NIC-Argentina, and their decisions are subject to judicial review. For the time being NIC-Argentina is not charging any filing or renewal fees. Under the Argentine Constitution, the establishment of fees by a public entity is a function of Congress.

The domain name registration rules were first incorporated by means of Resolution No. 2226/2000 adopted by the Argentine Ministry of Foreign Affairs on 8 August, 2000. Registration is made electronically on a first-come first-served basis, by accessing the web site of the Registry at "www.nic.ar". The registrant must complete a form including personal information, and declare under oath that the information included in the form is accurate, that the registration of the domain name does not violate any third party rights, and that the registration is not made for an illegal purpose. The rules allow the Registry to reject applications or revoke registrations in certain cases. The Registry will not act as mediator nor arbitrator in any conflict that arises between the registrants, applicants or third parties relating to the use or registration of a domain name, nor does it assume any responsibility regarding the lawfulness of a registered domain name. The registrant is solely responsible towards third parties for the registration of a domain name.

The administrative resolutions can be modified through resolutions ("*Actas de Modificación*") issued by the Ministry of Foreign Affairs.

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



4.5 Copyright

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

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

- (i) writings (as in dictionaries, prayer books, almanacs and articles);
- (ii) musical works and plays;
- (iii) cinematographic, choreographic and pantomime works (as long as these works have been materialised in a tangible form)
- (iv) drawings, paintings and sculptural works;
- (v) architectural, artistic or scientific works;
- (vi) maps, plans and other printed matter;
- (vii) plastic works, photographs, engravings and phonograms;
- (viii) titles and characters as an integral part of a work;
- (ix) works of applied art;
- (x) computer software and databases; and
- (xi) derivative works, new versions, compilations, and translations, etc.

The Argentine courts have established that in order for a work to be protected by the IP Law, it must be expressed in a tangible, material form (thus excluding abstract ideas), and must contain a minimum degree of originality and novelty.

As a general rule, the IP Law grants rights to the author for life and to his or her heirs and successors in title for seventy years as of 1 January following the author's death. For photographic works, the copyright period runs through the author's life and for fifty years after his death. The term for cinematographic works runs for a period of 50 years computed from the date of death of the last person ("*collaborator*") participating in the production of the cinematographic work.

In order for a foreign work to qualify for copyright protection in Argentina, the conditions for protection under a copyright convention to which Argentina has adhered must be satisfied or the author must have complied with the formalities required for protection in the country where the work was first published (provided that he is a national of a country recognising copyright). If the foreign author meets these conditions, Argentina will grant the same protection as that provided to its own nationals (principle of "national treatment").

Registration is not mandatory in Argentina for those foreign works which meet the protection requirements mentioned in the above paragraph. Nevertheless, it is advisable to register copyright works with the Argentine copyright authorities ("*Dirección Nacional del Derecho de Autor*" or "DNDA") for evidentiary value and possible tax benefits (see paragraph 3.2). Furthermore, from a practical standpoint, it is procedurally easier and less expensive to pursue infringements in Argentina on the basis of a copyright registered here rather than prove compliance with conditions imposed by foreign law. Notwithstanding this, in order for a transfer of intellectual



property to be enforceable (i.e., an assignment or a license of rights), it must be recorded with the DNDA in order to be effective against third parties.

Argentina adheres to the Roman legal tradition that the author is the individual person who created the work, who, in such capacity, has rights which are not assignable, transferable or revocable. Unlike the Anglo-Saxon system where, for example, original ownership of a work may be granted by an employee to an employer who has funded the creation of a work, in Argentina, as a general rule, only the author may be the owner of the rights in the work. However, when an employee is specifically hired for the creation of a computer program, the rights of the work belong to the person who hired the work, unless otherwise agreed. The author may assign the economic or patrimonial rights in a work to a third party, but that author may never be separated from certain inalienable rights over the work, such as the right to preserve its integrity or the right to paternity of the work.

4.5.1 Computer Software

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

Law No. 25,036 also introduces a novel principle into Argentine law, analogous to the system known in the United States as "work made for hire", whereby the employer is the owner (unless agreed otherwise) of any author's rights to a computer program produced by an employee in the course of employment.

In addition, the above-mentioned law allows licensees to make a back-up copy, which can only be used for the replacement of the original software, if the latter is lost or becomes unusable.

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

Finally, Law No. 25,036 provides that computer software components and documents must be registered with the DNDA as determined by the pertinent regulations. Although local registration is not strictly necessary according to the terms of the international conventions in force, registration before the DNDA provides an effective proof of ownership which has important evidentiary value when pursuing infringements in the local courts.

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

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

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



If the technology transfer agreement has been duly registered with the INPI, the tax withholdings that the licensee would have to make on royalty payments to a foreign licensor would amount to the effective rate of:

- (i) 21% of such payments, if the agreement relates to the rendering of technical assistance, engineering or consulting services unavailable in Argentina in the relevant authorities' acknowledge;
- (ii) 28% of such payments, if the agreement relates to the assignment of rights or licenses for the exploitation of trademarks, patents or any technology services that fall within the scope of Law No. 22,426, other than the services referred in point (i) above.

Furthermore, the effective rate of income tax withholding may be lowered by the provisions contained in tax treaties for the avoidance of double taxation.

On the other hand, if the technology transfer agreement is not registered with the INPI, the licensor's royalty earnings will be subject to a 35% effective rate of income tax withholding.

In as far as the licensee is concerned, if the technology transfer agreements are registered with the INPI, the Income Tax Law provides that local licensee may deduct royalty payments in order to determine their taxable net income as follows:

- (i) if the royalties relate to the exploitation of patents and trademarks, the deduction is limited to 80% of the payments made;
- (ii) if the royalties relate to technical and financial counselling agreements or any other agreement for the rendering of counselling of services of any nature whatsoever, the licensee is authorized to deduct the royalty payments, with certain limitations. The royalty payments shall not surpass 3% of the sales considered in the contracts as basis for the royalties, or 5% of the amount invested by the licensee (local company) in the development of the business related to the (technical or counselling) service agreement. Any amounts paid in excess of these limits may not be deducted by licensee.

If the technology transfer agreements are not registered with the INPI, the local licensee may not deduct royalty payments.

Treaty regulations regarding royalty deductions may however override the above limitations in the Income Tax Law.



5. Distribution and Agency Agreements

5.1 Distribution Agreements

There are no statutory rules specifically governing distribution agreements under Argentine law. However, the courts have developed an important body of caselaw applying general principles of law. The system in Argentina is not, however, one of "*stare decisis*" and therefore, although the lower courts tend to follow the decisions of higher courts (especially the Federal Supreme Court), the rulings of the higher courts are not binding upon the lower courts. Caselaw therefore basically provides guidelines in respect of the general principles to be applied in this area.

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

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

Wrongfully terminated parties are generally awarded damages calculated upon the basis of the profits that would normally have made over a period that is determined by the court according to the circumstances of the case. In order to recover damages in excess of this, the terminated party would have to prove specific damages such as a specific injury to its goodwill, destruction of its business or moral hardship.

5.2 Agency Agreements

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

Under a commercial agency agreement, an individual or legal entity undertakes to promote and/or execute transactions for the account of the principal. The commercial agent usually acts in its own name, although it may act in the name of its principal. In compensation for its services, the commercial agent is entitled to a commission, generally calculated as a percentage of the amount of sales promoted by the agent for the principal.

The commercial agent is an independent contractor not subordinate to the principal. The agent is not an employee of the principal and the relationship between the two parties is therefore not subject to labour law. Furthermore, the agent normally does not bear the economic risk of the transactions in which it participates on behalf of the principal.

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

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



6. Consumer Protection Legislation

6.1 General Protective Provisions

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

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

6.2 The 1993 Consumer Protection Law

In 1993, the Argentine Congress enacted the Consumer Protection Law No. 24,240 (the "CPL"). The Commerce and Industry Secretary (an agency of the Ministry of Economy and Public Works and Services) enforces the CPL by reviewing adhesion contracts, mediating in disputes and imposing penalties in the event of violations.

The CPL protects consumers throughout the different contractual phases from negotiation to the delivery and performance of goods and services. Traders must provide consumers with true, detailed and accurate information about the goods or services offered. Consumers have the right to initiate individual actions from the moment their CPL rights are threatened, which is in contrast to the Civil Code, the fair trade laws and the antitrust laws, where it must be established that actual damage has occurred in order to bring an action. The CPL also includes the right to initiate collective proceedings (class actions) through consumer associations and specific proceedings aimed at resolving disputes affecting consumers.

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

Traders must provide consumers of non-perishable goods with a legal guarantee for any defects affecting the goods delivered and their correct operation. Goods are guaranteed for three months from the date of delivery. The producers, importers, distributors and traders of such goods are jointly liable for this legal guarantee.

The CPL also offers protection to consumers with respect to the following types of offers:

Public Offers - The CPL provides that an offeror is bound by offers and advertisements of goods and services made to the public. Such offers must include their commencement and termination dates.

Unsolicited Goods - The CPL governs the sale of unsolicited goods and services. If an offer is made to the consumer with unsolicited goods, the consumer is not bound by any alleged obligation imposed by the offeror to pay for and preserve the goods, or to reject the offer and return the goods even if the return of the goods is free of charge.

Solicitation - Acceptance by a consumer of offers made by door to door solicitation, postal, telephonic, electronic, or similar means may now be revoked by the consumer at any time during a period of 5 days from



acceptance of the offer or delivery of the goods, whichever is later. This right may not be waived by the consumer. Sellers must inform consumers of this right in all documents addressed to them. The costs of returning the goods must be borne by the seller.

Purchase Finance - A sale in which purchase finance is offered will be null and void unless the seller states in writing: (i) the purchase price, (ii) the total amount of debt outstanding; (iii) the total interest to be paid; (iv) the effective annual interest rate; (v) other costs and fees, if any; and (vi) the number and frequency of installment payments.

Furthermore, imported goods requiring instructions for use must be delivered with a manual in Spanish explaining their use, installation and maintenance.

6.3 Antitrust Laws

6.3.1 Argentine Antitrust Law

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

In September 1999 the Argentine Congress modified the former antitrust law, by means of Law No. 25,156 and Decree No. 1019/99 the provisions of which took effect on 28 September 1999 (together referred to as the "Antitrust Law"). The Antitrust Law was further implemented by Decree No. 89/2001 and modified by Decree No. 396/2001, effective 9 April, 2001.

The Antitrust Law, enacted five years after the constitutional change, can be considered as a further step towards the regulation of competition in Argentina and moreover, the Antitrust Law has introduced a system of control over mergers and acquisitions into Argentina.

6.3.2 Scope

Article 1 of the Antitrust Law prohibits certain acts or conduct relating to the production and exchange of goods and services if they limit, restrict, falsify or distort competition, or if they constitute an abuse of a dominant position in a market, and provided that in both cases, they may cause harm to the general economic interest. Such behaviour or conduct is not therefore unlawful per se, nor is it necessary to cause actual damage, it is only unlawful if the conduct is likely to cause harm to the general economic interest.

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

6.3.3 Description of Prohibited Practices

Article 2 of the Antitrust Law lists a series of acts considered as restrictive practices, provided that the other requirements established in Article 1 of the Antitrust Law are also met. This list which is not exhaustive, includes:

- (i) price fixing;
- (ii) practices that limit or control technical development, or the production of goods and services;
- (iii) practices that establish minimum quantities or the horizontal allocation of zones, markets, customers, and sources of supply;



- (iv) agreeing or coordinating bids in public biddings;
- (v) excluding, impeding, or hindering, one or more competitors from accessing a market;
- (vi) conditioning the sale of goods to the purchase of another good or to the use of a service, or conditioning the provision of a service to the use of another service or the purchase of goods;
- (vii) limiting the purchase or sale to a condition of not using, purchasing, selling or supplying goods or services produced, processed, distributed or commercially exploited by third parties;
- (viii) unwarranted refusal to fulfill purchase or sale orders of goods or services submitted in existing market conditions;
- (ix) imposition of discriminatory conditions for the purchase or sale of goods or services not based upon existing commercial practices;
- (x) suspending the provision of a dominant monopolic service in the market to a provider of public services or of services which are of public interest; and
- (xi) predatory pricing (this term is broadly defined in the law).

6.3.4 *Dominant Position*

For the purposes of the Antitrust Law, the term “dominant position” includes situations where one person or more than one person is the only offeror or demanding party of a specific product within the Argentine market or in one or more parts of the world; or even if it is not the only offeror or demanding party in any of these markets, the person is not subject to substantial competition; or through a vertical or horizontal integration, that person is in a position to harm the economic viability of a competitor in the market.

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

The Antitrust Law provides that certain transactions resulting in economic concentrations (“*concentraciones económicas*”) require the prior approval of the Tribunal for the Defence of Competition² (please see paragraph 6.3.7 below). Transactions requiring such approval are those resulting in the assumption of control of one or more companies by means of any of the following acts:

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

² This role is at present being fulfilled by the existing Commission for the Defence of Competition (“the Antitrust Commission”) pending the setting up and regulation of the (new) Tribunal for the Defence of Competition pursuant to the provisions of the Antitrust Law.



The Antitrust Law provides that in the cases where the relevant group of companies involved has a “volume of business”³ in Argentina of over A\$ 200 millions the transaction must be notified to the Tribunal for review, prior to, or within a week of the first to occur of the following:

- (i) the publication of any cash tender or exchange offer; or
- (ii) the date that any transfer effectively occurs.

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

If no decision is issued by the Tribunal within 45 business days as from the filing of the application and relevant documents, the transaction shall be considered as tacitly approved. This 45-day period can be extended by the Tribunal by means of a request for additional information and/or documentation. If the transaction involves a company or companies that are engaged in business in a regulated market, the Tribunal will grant a period of 15 business days to the regulatory agency to issue its opinion on the effects of the proposed transaction. This 15-day period does not suspend the 45-day period for tacit approval.

In relation to transactions which take place abroad, the Antitrust Commission has indicated that such transactions must be notified if both parties carry on business in Argentina, either through a corporate presence here or through sales made in Argentina. The Antitrust Commission has stated that the parties are only allowed to carry on business here through sales in Argentina, if such sales constitute a substantive part of the market in Argentina for those goods.

6.3.6 Transactions Exempt from the Notice Requirement

Notwithstanding the above, the following transactions have been exempted from the requirement to give notice to the Tribunal:

- (i) acquisitions of companies, when the purchaser already holds more than 50% of the shares;
- (ii) acquisitions of bonds, debentures, non-voting shares or debt securities of companies;
- (iii) acquisitions of only one company by only one foreign company that does not have any assets or shares of other companies in Argentina;
- (iv) acquisitions of liquidated companies (which have not been engaged in any activity in Argentina during the preceding financial year);
- (v) if neither the total local assets of the acquired company nor the local amount of the transaction exceed A\$ 20 million each, provided, however, that the exemption would not be applicable, if any of the involved companies have been involved in economic concentrations in the same relevant market for an aggregate of A\$ 20 million during the previous 12 months or A\$ 60 million during the previous 36 months,
- (vi) gratuitous transfers of goods to the Argentine State, the Provinces, Municipalities and the City of Buenos Aires; and
- (vii) transfers of goods to mandatory heirs, by acts between living persons or by cause of death.

³ “Volume of Business” means annual sales net of sales discounts, Value Added Tax and other taxes related to the volume of business.



6.3.7 *The Tribunal for the Defence of Competition*

The Tribunal will be constituted and its members will be appointed by the Government by means of a public competition before a jury consisting of different members of the Government, the Judiciary, the Chambers of Congress, the president of the National Academy of Law and the president of the National Academy of Economic Sciences. Pursuant to Decree No. 89/2001, this Tribunal was to be created by the end of 2001, but it was not formed as of the date of this booklet. Persons appointed to the tribunal will hold office for six years. The Tribunal will have, *inter alia*, the following powers to:

- (i) approve or reject transactions of economic concentration notified to it;
- (ii) study and analyze market conditions, with the power to request information and documents from individuals, the national, provincial or municipal authorities and consumers' associations;
- (iii) hold hearings with the participation of the parties that have filed complaints, the injured parties, witnesses and experts;
- (iv) impose the sanctions provided for in the Antitrust Law;
- (v) promote settlements and compromises;
- (vi) whenever it considers it appropriate, to issue (non-binding) opinions regarding competition with respect to laws, regulations, communications and administrative acts
- (vii) encourage and file claims with the courts; and
- (viii) request the competent judge to grant interim measures (i.e. injunctions), which must be acted upon within 24 hours.

6.3.8 *Procedure*

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

6.3.9 *Penalties and Sanctions*

The Tribunal may apply (i) fines of up to A\$ 150 million upon those engaged in any prohibited activities; and (ii) fines of up to A\$ 1 million per day upon those who violate the obligation to notify acts of economic concentration, or who disobey cease and desist orders issued by the Tribunal.

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



7. Labour and Immigration Laws

7.1 Labour Laws

Employer-employee relations in Argentina are principally governed by Labor Contract Law No. 20,744 of 11 September, 1974, as subsequently amended (the "LCL"), collective bargaining agreements and the individual terms of labor contracts between employers and their employees.

Argentine Law No. 25,877 (the "Reform Law") effective as from 28 March, 2004, introduced several amendments to the existing Argentine labour legislation.

7.2 Salaries

Salaries may be paid upon a monthly, daily or hourly basis, depending on the type of work performed by the employee. The mandatory minimum wage is A\$ 450 per month. By law, employees are entitled to an annual bonus (*"aguinaldo"*) paid in two installments, in June and December each year, equivalent to 50% of the highest monthly wage received during the previous six month period. Typically, the standard working week is from 40 to 48 hours per week, with an average of 8 hours per day. Workers earn overtime pay for work performed in excess of the standard working week. The rates of overtime pay are 150% of the base rate on normal work days and 200% of the base rate on Saturday afternoons, Sundays and official holidays.

7.3 Contributions and Withholdings

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

The following table sets out the mandatory social security contributions and withholdings calculated as the employee's monthly salary. Employees' contributions are calculated on the first A\$ 4,800 of the monthly salary. Regarding employer's contributions for family allowances, unemployment fund and pension, the ceiling over which they are calculated is currently A\$ 10,000 and will be eliminated as from October 2005.⁴ These figures are subject to adjustment from time to time.

	Employer	Employee
- Family Allowance	} 17% or 21%	--
- Unemployment Fund		--
- Pension		10% or 14%
- Medical Care	6%	3%

In the case of employers whose main activity is commerce and/or the provision of services and have annual invoices of more than A\$ 48,000,000, the percentage for employer contributions is 21%. The contribution for other companies, unions, healthcare organizations, and Small and Medium Size Companies (PYMES) is of 17%.

⁴ Decree No. 491/04.



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

7.4 Vacations and other Leaves of Absence

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

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

In the event of an inability to work due to illness or accidents which are not related to work, employees are entitled to their full salaries for a period which may vary from 3 to 12 months, depending on length of service and the existence of a dependent family. If the impediment continues beyond the foregoing periods, there is an additional period of up to one year during which the employer, without paying the corresponding salaries, must reserve a right for the employee to return to the previous employment position. This right to return to a previous employment position is also granted to employees elected as union officers or to certain government posts.

7.5 Trial-Period Hiring

Employment contracts may be for an indefinite period or for a fixed term. In indefinite period contracts, the first three months are a trial period. During the trial period either party may terminate the labor relationship at any time without the employer having an obligation to make a severance payment. However, the employer is obliged to give the employee a fifteen-day-prior-notice. Each employee can be hired on a trial basis only once by the same employer.

Furthermore it is possible, with the agreement of the relevant Union, to extend the trial period for up to six months.

During the trial period, both employer and employee are required to make the normal contributions and withholdings.

7.6 Termination of Labour Contracts

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

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

Furthermore, the employer is required to make severance payments to the employee based on the employee's highest ordinary monthly salary accrued during the previous year of employment. The employer must pay the



employee one month's salary for each year of employment or period worked in excess of three months for which the employee worked with such employer. However, the severance payment cannot be less than the years of service multiplied by three times the employee's average monthly salary provided for in the collective bargaining agreement at the time of the dismissal.

These payments are increased if the employee is not correctly registered or if the employee has to make a claim to receive his/her severance payment.

If an employee is dismissed for gross misconduct, no severance payment or prior notice is required; however, the burden of proof lies with the employer to show that gross misconduct occurred and the courts are generally unsympathetic to employers in this area.

The employer may dismiss personnel in the case of *force majeure* or an involuntary reduction of the employer's operations. Those to be dismissed first will be those with the shortest periods of service, and severance payments will amount to half a month's salary for each complete month of service or period worked in excess of three months. In no case, however, may the severance payment be less than half a monthly salary.

7.7 Small and Medium Sized Companies

Law No. 24,467, of 15 March, 1995, created certain incentives for small and medium sized companies (referred to as "PYMEs"). PYMEs are defined in different legal dispositions. The criteria that the Government currently use to define a PYME are based on amounts of turnover, depending upon the type of activity in which the employer company is engaged.

In contrast to the general legislation on dismissal, in the case of PYMEs the employer is only required to give prior notice of one month to the employee, regardless of the length of service (*i.e.*, the two months' prior notice which must otherwise be given to employees with over 5 years service is not applicable).

Collective bargaining agreements for PYME employees can split the payment of semi-annual bonuses (*aguinaldo*) into three payments instead of two.

7.8 Work Risk Insurers ("ART")

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

The ART is financed by monthly payments made by the employers of insured persons. These payments are calculated by reference to the employer's payroll and vary according to the statistical level of losses and damages that result from the activities of that particular employer.

One of the objectives of the LRT is the prevention of work accidents and illness. In order to achieve this, the law requires that each insured establishment must develop a plan for the improvement of hygiene and security conditions at work. The Superintendency of Insurance ("SRT") must approve any such plan, prior to implementation by the employer.



7.9 Other Employer Liabilities

In addition, employers are required to contract life insurance policies for their employees. The minimum cover required is A\$ 6,480 per employee.

7.10 Immigration Controls

7.10.1 Foreign Workers

Citizens of most countries are not required to obtain a visa to enter Argentina for up to three months.

A person wishing to reside and work in Argentina, however, must obtain a residence permit from the Immigration Board. There are two categories of resident: a permanent resident and a temporary resident.

Permanent and temporary residence permits may be applied for by the prospective employee either at the Argentine consulate of his or her country of residence or by the prospective Argentine employer in Argentina.

The prospective employee may only enter Argentina once he or she has obtained from the respective Argentine Consulate or the employer has obtained from the Argentine Immigration Board (as the case may be) the relevant Entrance Permit. The prospective employee may not enter Argentina as a tourist and then apply for his or her permanent or temporary residence in Argentina.

7.10.2 Permanent Residence

A permanent residence permit grants a foreigner the right to reside and work in Argentina indefinitely. To apply for a residence permit in order to work in the country, the applicant and his or her family must provide certain personal data, medical certificates and other documents. In particular the applicant must provide a certificate that he or she does not have a criminal record. In addition, the company for which the applicant is going to work must provide additional corporate information and the applicant and the employer must enter into a labour contract that contains certain required clauses regarding term, etc.

7.10.3 Temporary Residence

A permit for temporary residence is granted to foreigners wishing to enter the country for a limited period of time. There are different categories for which foreigners may apply. The authorization may be granted for a period of up to one year and may be renewed for two additional years. The documentation required for this purpose is basically the same as that required for permanent residency.

7.11 Temporary Labour Regulations (enacted on 6 January, 2002)

The Public Emergency and Exchange Regime Amendment Law No. 25,561 and other related regulations ("Emergency Law") amended the labour framework regarding termination of employment suspending all labour contract terminations without cause as from 6 January, 2002 until the INDEC unemployment rate is below 10% ("the Suspension Period").

If any employer terminates the employment without just cause during the Suspension Period, the Emergency Law provides that any compensation due under normal labour regulations must be increased by 80%.

Notwithstanding the increase in compensation for termination, other emergency regulations further provide that for terminations without cause during the suspension period, the employer must, depending on the number of employees involved: a) enter into a Preventive Crisis Procedure ("PCP", see point 7.11.1 below), or b) notify to



the Labour Ministry and the Union the employer's decision to dismiss the employee without cause (see point 7.11.2 below).

If the employer fails to comply with the provisions described in the paragraph above, the Labour Ministry will be entitled to order the immediate ceasing of all the terminations, take the necessary steps to preserve the labour relationships and demand the payment of unpaid wages.

Moreover, in those cases in which the employer had invoked Article 247 of the Labour Contract Law⁵ (terminations for force majeure or economic reasons), the terminations will be considered as dismissals without justified cause, with the consequences described in points 7.11.1 and 7.11.2 below.

7.11.1 Preventive Crisis Procedure (PCP)

Whenever terminations or suspensions affect more than: (i) 15% of the workers of a company with less than 400 workers; (ii) 10% of the workers of a company with more than 400 and less than 1,000 workers; or (iii) 5% of the workers of a company with more than 1,000 workers, the PCP must be accredited before the Labour Ministry, at the request of either the employer or the Union representing the affected employees.

The PCP is a procedure aimed at reaching an agreement between the employer and the union, in order to minimise the effects of the crisis.

During the negotiation of the PCP, the employer may not implement any of the measures that originated the PCP. Any breach will enable the workers to maintain their labour relationship and entitle them to collect unpaid salaries. Furthermore, the union may not go on strike or take any other action during the negotiation of the PCP.

7.11.2 Notification to the Labour Ministry (Decree No. 328/1988)

This Decree is applicable when the number of the affected employees is below the percentages required for the PCP (see the section above).

According to this Decree, 10 days prior to the termination of any labour relationship or suspension of any employee, the employer must notify the Labour Ministry and the Union representing the employee and provide justification for such decision. The Labour Ministry may bring the parties to an agreement, and require information from them. If, however, the Labour Ministry takes no action during that 10 day period the employer may then dismiss or suspend the employee.

⁵ Article 247 of the LCL: "In those cases in which dismissals were ordered on account of force majeure or lack of or reduction of work not imputable to the employer and justified in a duly attested manner, the worker shall have the right to receive an indemnity equivalent to one half of what is established in Article 245 of this law."



8. Environmental Laws

8.1 Introduction

Unlike the U.S. and Western European countries, Argentina has only fairly recently shown concern regarding environmental issues. The enactment of Articles 41 and 43 in the Argentine Constitution, as amended in 1994, as well as new federal and provincial legislation, have strengthened the legal framework dealing with damage to the environment. Legislative and government agencies have become more vigilant in enforcing the laws and regulations regarding the environment, increasing sanctions for environmental violations.

Under the amended Articles 41 and 43 of the Constitution mentioned above, all Argentine inhabitants have both the right to an undamaged environment and a duty to protect it. The primary obligation of any person held liable for environmental damage is to rectify such damage according to and within the scope of the applicable law. The federal government sets the minimum standards for the protection of the environment and the provinces and municipalities establish specific standards and implementing regulations. This new article in the Constitution also forbids the introduction of hazardous waste, including radioactive waste, into the country.

The following paragraphs refer to the main Argentine federal legislation which deals with the protection of the environment. It is important to mention, however, that the Province of Buenos Aires, where most of the industries in Argentina are located, has also enacted environmental laws. These laws include requiring medium and large companies to prepare and file environmental impact statements in order to be granted the required operating permits for their activities and a law establishing rules for the production, handling, transport, treatment and disposal of hazardous waste within its territory.

8.2 Environmental General Law

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

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

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

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

Pursuant to Law No. 25,675, all persons and entities must provide information related to the environmental impact of their activities. This information shall be of unrestricted access to the public, unless declared classified.

Law No. 25,675 allows citizens to participate in the commissioning of any activities or projects that may significantly and negatively affect the environment through compulsory public hearings or similar procedures.



Pursuant to the criteria established in other minimum standard specific laws which have been passed recently, Law No. 25,675 provides that any person or entity which carries out activities which are dangerous for the environment and ecosystems must contract an insurance policy that guarantees the remediation of any damages the activity may cause. Moreover, this law provides for the creation of an environmental restoration fund for the execution of remedial action.

Law No. 25,675 provides that the person liable for environmental damages must take the necessary remedial actions to restore the *status quo ante*. In case remediation is not possible, the indemnification determined by the courts must be deposited with the Environmental Compensation Fund. The main purpose of this fund is to guarantee the quality of the environment and the prevention and mitigation of damages to the environment.

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

8.3 Industrial Waste

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

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

"Industrial waste" is defined as any solid, liquid or gaseous element, substance or object, which cannot be used by its holder, producer or generator who must therefore dispose of it, or has the legal obligation to do so, and which is obtained as a result of an industrial process, by the performance of a service activity, or which is directly or indirectly linked to that activity, including emergencies or accidents.

Law No. 25,612 empowers the provincial authorities and the City of Buenos Aires to control and supervise the integrated management of industrial waste; the identification of its generators, the characterization of the waste generated and its classification according to the level of risk. In addition, these authorities have been made responsible for the registries where those persons or entities responsible for generation, handling, transport, storage, treatment and final disposal of industrial waste must register.

The information gathered by such registries must be incorporated into an integrated information system which must be of unrestricted access unless it affects vested rights or national security. Furthermore, Law No. 25,612 provides that its enforcement agency will establish the minimum and necessary characteristics of the technology to be applied in the integrated management of industrial waste.

In general terms, Law No. 25,612 lays down a system of tort liability similar to that of Law No. 24,051 described in the paragraph 8.4. below.

Infringements of this law, and its complementary regulations may be subject to warnings, fines, closure, suspension of activities for up to one year and definitive withdrawal of authorizations and registrations in the appropriate registers. In the case of legal entities, board members and managers may be held severally liable for such penalties.



There was provision in Law No. 25,612 for a new type of crime sanctioned with prison terms ranging from 3 to 10 years, which was to be applicable to those who make use of industrial and service industry waste to adulterate or contaminate water, soil or air, or jeopardize the population's quality of life, living things in general, biological diversity or ecological systems. However, all articles of Law No. 25,612 dealing with criminal liability were vetoed by the President and are therefore not applicable.

It is expected that once the enabling decrees for Law No. 25,612 are enacted there will be an increase in the costs related to environmental management.

8.4 Hazardous Waste

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

Hazardous waste is any waste that may cause damage, directly or indirectly, to living creatures or contaminate soil, water, the atmosphere or the environment in general. In particular, the law considers hazardous waste those substances listed in the law and its regulations, including: those substances arising from medical procedures performed in hospitals, medical centres and clinics for human and animal health; waste arising from the manufacture and processing of pharmaceutical products, mixtures and emulsions of oil waste and water or hydrocarbons and waste which contains asbestos (dust and fibres), ethers, certain organic solvents, or those which contain explosives, flammable liquids and solids, or toxic gases.

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

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

8.5 Air Pollution

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

8.6 Water Pollution

No specific national legislation on liquid discharges has existed until present. However, in the provinces, the City of Buenos Aires and certain municipalities, there are regulations which prohibit industrial establishments from commencing activities or expanding existing facilities, even on a provisional basis, if such action would result in the discharge of waste into water courses and if the facilities do not satisfy the requirements provided in the regulations. These regulations also define concepts such as water contamination, discharge, concentration, permissible limits, special duty to control contamination, non-tolerated discharges, quality guidelines, etc.



Those who violate these regulations are subject to various penalties, such as fines and the obligation to remedy the damage. In the case of repeated violations, more severe penalties, including the closing down of the polluting plant, may be applied.

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

According to Law No. 25,688, a permit must be obtained from the competent authority in order to use water.

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

The regulations by means of which Law No. 25,688 will be implemented will determine the permitted water contamination standards for any activity within the Republic of Argentina.

8.7 Polychlorinated Biphenyls (PCBs)

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

According to Law No. 25,670, the Government is empowered to take all necessary measures to guarantee the prohibition of the production, commercialization and the entry of PCBs into Argentina, as well as the elimination of used PCBs and the decontamination and elimination of PCBs and machines containing PCBs within the terms provided therein.

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

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

PCB's possessors must identify all equipment containing PCBs; create an internal registry of activities in which PCB's are used and bring any equipment containing PCB's as well as the places where PCB's are stored up to certain standards and take all necessary measures to avoid risks to health and environmental contamination.

Law No. 25,670 provides that by the year 2010 all equipment containing PCBs which the possessor intends to keep must be decontaminated. Until decontamination is completed, the replacement of the PCB shall be forbidden.

Law No. 25,670 provides that breaches to the dispositions contained therein shall be sanctioned with warnings; fines ranging from 10 to 1000 basic salaries of the lowest category of national public employees; temporary decommissioning; and close-down.



8.8 Criminal Code

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

8.9 General Rules of Tort Law

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

The measure of tort liability in environmental matters is strict liability. However, the plaintiff must establish that the damage was caused by the polluting asset owned by or under the control of the defendant. Tort actions have a statute of limitations of two years from the date the cause of action arose, but the running of this period may be delayed where the plaintiff was unaware of the existence of the damages or where the damages were caused over a period of time.

Possession of government permits allowing the handling of assets which may cause environmental damage does not release the owner or custodian of such assets from potential tort liability.

8.10 Other Regulations

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



9. Foreign / International Aspects

9.1 The Foreign Trade Regime

9.1.1 Mercosur

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

The objectives of the Mercosur Treaty are:

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

To date, Mercosur has achieved a free trade zone with respect to most products. There are products, however, that are considered "sensitive" and consequently excluded, which are still subject to tariffs, which are being reduced each year (such as sugar, automobiles and capital assets). It is expected that they will gradually be included among all other products covered by the TEC by the year 2006.

9.1.1.1 Mercosur - Chile Agreement

Chile and the Mercosur countries entered into a Complementary Economic Agreement ("CEA") on 25 July 1996. Beginning on 1 October 1996, the Mercosur countries and Chile will gradually become a free trade area over a period of 8 years.

Pursuant to the aforementioned agreement, Chile shall maintain its tariffs with respect to third countries at a rate of 11%, and the Mercosur shall maintain the relevant rates of TEC on imports from third countries.

Some of the main aspects of the CEA are:

- i) imports of 85% of the products shall be subject to a gradual, linear and automatic reduction of duties, which began with a 40% reduction on 1 October 1996 and which will finish with a 100% reduction on 1 January 2004;
- ii) the following products are exempted from the general rates of reduction described above and will have special treatment according to their classification:
 - sensitive products: these will have an initial reduction of 30% as of 1 October 1996, reaching 100% in 2006. Pork, poultry, eggs, corn, freezers, refrigerators, gas and steel are included in the list of sensitive products.



- particularly sensitive products: these will have an initial reduction of 14% starting 1 January 2000 and reaching 100% by 2006. These products include textiles and shoes;
 - other exemptions: certain products such as beef, cereals, cars, sugar and wheat are subject to a lower initial reduction of duties and will take longer to reach a zero rate of duty.
- iii) used goods are not covered by the CEA;
- iv) products originating in free trade zones within Mercosur and Chile shall be subject to duties in the same manner as those originating from third countries.

9.1.2 *Customs Regulations*

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

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

No import duty is payable in the case of goods originating from a Mercosur member state. However, in order that the import of products from these member states may be exempted from customs duties, they must meet the requirements as to origin. A certificate of origin must be produced and certified by an official authority of the country from which the products originate.

There is a specific levy known as "*tasa de estadística*" (statistical tax) which is levied at a rate of 0.5% and which is applicable on all imports of goods other than those from Mercosur member states.

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

Mining activities are subject to a favourable customs treatment as far as import duties are concerned. The importation of capital goods is also subject to a more favourable customs treatment as far as import duties and taxes are concerned.

Argentine customs' regulations permit the temporary import of goods into Argentina without the payment of duties, subject to compliance with certain requirements. In particular, the importer must provide a guarantee to the Argentine Customs' authorities that any such products will be re-exported after the period allowed for temporary import has expired.

Since March 2002, the Argentine Government has resolved to impose duties on the exportation of goods. Resolution No. 11/2002 issued by the Ministry of Economy, published in the Official Gazette on 5 March, 2002, as amended, levies export duties on the exportation of all types of goods. The applicable rates generally vary from 5% to 20%, depending on the type of merchandise.

9.1.3 *GATT/WTO*

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



Law No. 24,425 introduced the Agreements on Antidumping, Countervailing duties, and Safeguard Measures, in accordance with Section XIX of the GATT Agreement 1994 into the Argentine legal system. In Argentina the Ministry of Economy has been designated as the enforcement authority for this law.

Notwithstanding the reductions in tariff rates and other barriers to free trade, Argentine producers may, however, combat injurious import competition in accordance with WTO rules. Antidumping duties and countervailing duties are permitted to combat injurious imports that are unfairly priced. Safeguard actions are permitted where the injurious imports are not unfairly priced.

9.1.3.1 *Antidumping Legislation*

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

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

9.1.3.2 *Safeguard Measures*

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

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

- a) The authorities of the importing country must carry out an investigation (following a procedure pre-established in the law and enacting regulations), the results of which must establish:
 - (i) that imports of the investigated products have increased;
 - (ii) the existence of actual or threatened material damage to a sector of Argentine industry;⁶
 - (iii) the existence of a causal relationship between such increased imports of the relevant product and the actual or threatened material damage.
- b) The relevant Argentine industrial sector must have complied with the objectives specified in the different stages of the readjustment program designed to improve competitiveness, and this program must be filed jointly with the request for application of the safeguard measures.

⁶ According to Regulatory Decree 1059/96, "Argentine industry sector" shall be understood to mean the group of producers of similar or competing products that operate within Argentina whose production, taken as a whole, accounts for at least 30% of the aggregate Argentine production of such products.



- c) Maintain a level of allowances and other undertakings in favour of the exporting countries affected by the adoption of the safeguard measures.
- d) The country proposing the adoption of safeguard measures must grant to exporting countries a prior consultation period in order to examine the data obtained during the investigation, exchange opinions concerning the measures at issue and reach agreement on the manner to attain the objective of maintaining the allowances mentioned in the previous paragraph.

9.2 International Treaties

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

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

9.3 Choice of Law and Jurisdiction

9.3.1 *Choice of Law*

Argentine law generally permits parties to a contract to select the laws that will govern their agreements as long as there exists some connection to the system of law that is chosen. Further, the choice of foreign law will only be valid to the extent that it does not contravene Argentine international public policy (*orden público or ordre public*). Typical public policy laws include criminal, tax, labour and bankruptcy laws. Further, matters concerning religion, tolerance and morality are considered as forming part of Argentine international public policy. Where Argentine international public policy is deemed applicable, an Argentine court will substitute the applicable rule of Argentine law for a foreign rule. Furthermore, if an act is invalid under foreign law, an Argentine court may apply Argentine law if it is more favourable to the validity of such act.

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

9.3.2 *Choice of Jurisdiction*

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

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

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



9.4 Enforcement of Foreign Judgements

If an international treaty for the enforcement of foreign judgements exists between a foreign country and Argentina, the rules of such treaty will prevail. In the absence of such a treaty, the National Code of Civil and Commercial Procedure (the "CPCC") will be applicable⁷ if the defendant is domiciled in the City of Buenos Aires or if the matter at issue will be debated before a federal court. Provincial procedure rules will be applicable where the matter at issue is to be debated before a provincial court. Unless otherwise stated herein, this analysis of the recognition of foreign judgements concerns federal procedure rules (*i.e.*, the CPCC) which are, in principle, applicable when a foreigner is involved.

9.4.1 Requirements

Subject to certain requirements, which are set out in Article 517 of the CPCC, Argentine courts will enforce foreign judgements resolving disputes and determining the rights and obligations of the parties to an agreement. Reciprocity is not required for an Argentine court to recognise a foreign judgement. The requirements which a foreign judgement must meet in order to be recognised in Argentina without further discussion of its merits are as follows:

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

Argentine courts do not automatically acknowledge the foreign court's original jurisdiction over the matter. As indicated in (i) above, the competency of the jurisdiction of the foreign court that rendered the judgement is analysed according to Argentine rules regarding jurisdiction. For example, Argentine courts would recognise judgements in cases where the defendant was domiciled in the jurisdiction of the court, the obligations of the parties to an agreement were to be performed in that jurisdiction, or in contractual disputes of a pecuniary nature, where the foreign court which issued the judgement had jurisdiction as a result of a valid forum selection. In all of these aforementioned cases, the jurisdiction of the foreign court would be considered competent.

9.4.2 Procedures Relating to Enforcement

To enforce a foreign judgement in Argentina, a notarised copy of the decision must be filed with the Argentine court and the petitioner must file a statement evidencing that each of the requirements mentioned in 9.4.1. above has been fulfilled. In addition, all documents (which must be originals or notarised copies) submitted to the court must be authenticated by the Argentine consulate with jurisdiction over the country where the documents were issued. If such country has ratified the 1961 The Hague Convention on the Abolition of

⁷ Until the issues raised by the new Charter for the autonomous City of Buenos Aires have been resolved.



Legalisation of Documents, the authentication by the Argentine consulate may be substituted by the Apostille contemplated in the aforementioned Convention. All documents in a language other than Spanish must be translated into Spanish by a translator registered in Argentina to be admitted by a local court. The amounts expressed in foreign judgements need not be converted to local currency.

A plaintiff seeking recognition of a foreign judgement is entitled to request and obtain protective remedies from a local court pending the decision on recognition. Protective remedies may be granted at the commencement of the proceedings or thereafter, and may consist of the attachment of assets or a general or specific injunction. In order to grant a protective remedy, a local court requires the petitioner to post bond for costs, expenses and/or legal fees.

Once all formalities have been complied with, and if the foreign judgement meets local requirements for recognition, the local court is not entitled to re-open the case heard by a foreign court.

9.4.3 Immunity

Certain assets are unavailable to satisfy judgements obtained or determined to be enforceable in Argentina. Such assets include (i) certain public property belonging to the Argentine federal, provincial and municipal governments (*i.e.*, property in the public domain in accordance with Articles 2337 and 2340 of the Civil Code); (ii) assets backing the Argentine monetary base pursuant to the Convertibility Law; (iii) assets that are essential for the direct provision of public services; (iv) any funds or other property covered by Article 66 of the Permanent Supplementary Budget Law, which are required to carry out the budget in any particular year; and (v) certain personal assets considered of elemental or basic necessity.

9.4.4 Judgements Against the Government

In addition to the immunity of certain public assets, there may be substantial delays in the enforcement of judgements against the Argentine Government, its agencies and other public entities. Notwithstanding certain existing rules for the appropriate budgeting for adverse judgements, Argentine courts, in general, can only enforce declaratory judgements against the Government, its agencies and other public entities if the Government, its agencies and other public entities do not comply with such declaratory judgements within a reasonable time fixed by the relevant Argentine court.

Further, actions against the Government, its agencies and other public entities may be limited under foreign laws which bar actions against sovereign states such as the U.S. Foreign Sovereign Immunity Act of 1976 and the U.K.'s Immunity Act of 1978.

9.4.5 Enforcement Expenses and Legal Fees

Payment of a court tax is a condition for instituting proceedings to obtain recognition of a foreign judgement for the payment of money. The current tax in the federal courts of Argentina or the courts of the City of Buenos Aires is 3% of the stated amount of any foreign judgement sought to be enforced, including accrued interest.

The amount of this tax is added to the amount of the foreign judgement, if enforcement is granted by the Argentine court. Therefore, the successful plaintiff can, in principle, recover from the defendant both the amounts stated in the judgement and any amounts determined by the courts as legal fees, other costs and expenses and, if applicable, court taxes. Subject to certain exceptions, Argentine law allows the successful plaintiff to recover attorney's fees (as determined by the court) and costs and expenses from the defeated party.



9.4.6 *Arbitration*

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



10. Security Interests

10.1 General

Security interests under Argentine law may be obtained through mortgages, pledges (including registered and floating pledges), security assignments and trusts. Security may be taken over a wide variety of property, such as movable and immovable property, securities, shares, cash and receivables. Nevertheless, certain assets subject to immunity may not be the subject of security interests (See Section 9.4.3 "Immunity").

10.2 Mortgages

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

10.2.1 Mortgages over Real Estate

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

A mortgage remains in full force and effect until all amounts secured by the mortgage have been paid in full; the mortgage is otherwise cancelled by mutual agreement of the parties or by a court order. The registration of a mortgage will automatically expire 20 years after the date upon which it was registered, unless it is renewed by the creditor, who may do so without the consent of the mortgagor.

10.2.1.1 Assignment of Mortgages

In general, Argentine law requires that a debtor be given notice of assignment for an assignment to be effective *vis-à-vis* the debtor and third parties. Such notice must be given to the debtor by public means (*acto público*), typically through a notary public. However, in securitization transactions, the mortgagor may waive (at the time of the constitution of the mortgage) the notice requirement or the mortgage may be registered in the name of a trustee.

10.2.1.2 Priorities

By operation of law, mortgages grant the registered mortgagee a first priority right over the underlying real estate as from the date upon which the mortgage is executed before a notary public, provided that the filing for registration is submitted within 45 days. If the filing is not submitted within 45 days, the first priority right starts to run on the date of filing. This first priority right includes principal, interest, costs and other ancillary amounts secured by the mortgage.

The holder of a first degree mortgage over real property will be given priority over any and all other credits subsequently secured by a mortgage over the same property. Priority is given according to the chronological order in which each mortgage is registered. The only rights that have more seniority than the mortgage over the property are expenses incurred in connection with mortgage enforcement proceedings to which the property may be subject, unpaid taxes relating to the property, condominium expenses and certain amounts owed to builders, architects and construction workers in connection with work undertaken on the property.



10.2.1.3 Foreclosure

Foreclosure of a mortgage is effected through a special summary proceeding which provides for the sale of the property through a public auction. The debtor may file only certain limited defences in these proceedings and any claims of the debtor not included in these defences must be made in a separate and ordinary proceeding before the court. Foreclosure may be conducted by out-of-court proceedings.

10.2.2 Mortgages over Ships

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

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

The registration of a mortgage over a ship under the Argentine flag will expire automatically 3 years after the date upon which it was registered, unless it is renewed by the creditor (this renewal does not require the consent of the mortgagor).

The rules relating to assignment, priorities and foreclosure of mortgages over ships are similar in most respects to those relating to real estate mortgages.

10.2.3 Mortgages over Aircraft

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

The registration of a mortgage over an aircraft will expire automatically 7 years after the date upon which it was registered, unless it is renewed by the creditor (this renewal does not require the consent of the mortgagor).

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

The rules relating to assignment and foreclosure of mortgages over aircraft are similar in most respects to those relating to real estate mortgages. The rules relating to the registration of assignments of mortgages are governed by the law that regulates the National Aircraft Registry. Priorities are specifically regulated by the Aeronautic Code.

10.3 Pledges

10.3.1 General

The essential requirement of the Civil Code is that the pledged asset be delivered to the creditor or placed in the custody of a third party. If the asset has been stolen or lost, the creditor or third party is not considered to have lost possession of the asset. The Civil Code further provides that upon default under the secured debt, the creditor must sell the pledged asset through a court auction and, in principle, may not obtain ownership of the asset. The creditor who has a pledge over an asset has a priority right to the proceeds from sale of the asset.



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

10.3.2 Registered Pledges

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

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

The certificate evidencing the pledge may be transferred by endorsement and the endorsement must then be registered with the Registry of Pledges in order to become effective *vis-à-vis* third parties. The original debtor as well as each endorser thereto shall be jointly and severally liable to the endorsee. The creditor's privilege with respect to the pledged assets terminates upon payment of the obligation or 5 years after registration of the pledge, unless a new registration for a further 5-year period is filed by the creditor (the consent of the debtor is not required for the new registration).

The above-mentioned decree-law which established the registered pledge, however, was very restrictive and contained various limitations. It allowed only certain physical assets to be pledged, and limited the type of creditors to whom registered pledges could be granted, excluding, for example, foreign financial institutions other than certain international financial institutions. The decree-law also included other restrictions, such as secured obligations could not exceed a term of 180 days, and pledges could not secure foreign currency obligations (except in certain exceptional cases).

On 11 December 1995, Decree No. 897/95 ("Decree No. 897") was passed, which reinstated Law No. 12,962, amended some of its provisions and modified several of the restrictions imposed by the decree-law. The new Decree No. 897 eliminated the 180-day term limitation for obligations secured by floating pledges and included all patent and trademark rights as well as credits pledged by financial institutions among the assets which may be pledged. It also provides, *inter alia*, that registered pledges can be registered both in favour of individuals or any kind of legal entity, whether domiciled within or outside the country (including, without limitation, foreign financial institutions).

It is noteworthy, however, that because under the Argentine Constitution a decree has less status than a law, the legality and validity of Decree No. 897 may be challenged upon constitutional grounds. Notwithstanding the above, Decree No. 897 has certain support on other legal grounds and in practice its provisions have been applied and upheld by the Registry of Pledges. To date, Decree No. 897 has not been declared void by the Courts.



10.3.3 Foreclosure

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

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

Decree No. 897 provides that clauses included in any pledge agreement which (i) enable the creditor to appropriate the pledged asset through any means other than a court auction or (ii) whereby the debtor relinquishes its rights to the enforcement proceeding to which it is entitled by law, shall be considered null and void, except in cases where the creditor is either: (a) the Government, its agencies and other public entities, (b) financial institutions authorised by the Central Bank of the Republic of Argentina, and (c) international financial institutions. Upon the request of any of the aforementioned creditors, the judge shall order the seizure of the pledged assets and shall have them delivered to the creditor who may thereafter sell the asset using the same means available as in an ordinary commercial pledge.

10.3.4 Pledges of Shares

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

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

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

Unless the pledgor and pledgee agree otherwise, the pledgor retains all rights relating to ownership of the shares (such as dividend and voting rights) while the pledge is in force. The pledgee has the obligation to ensure that the pledgor has the ability to exercise such rights and the pledgor must indemnify the pledgee for any costs incurred in fulfilling this obligation.

10.4 Security Assignments and Trusts

Security may also be obtained by means of security assignments and trusts. Trusts are discussed under Section 2.2.3 above and constitute an excellent means of providing security, since the relevant assets may be placed in trust with a trustee which holds them as a separate estate which is not subject to bankruptcy proceedings of either the settlor, the trustee or the beneficiaries.

Prior to the enactment of the law on trusts in early 1995, security assignments were widely used. One of the main differences with a trust is that in a security assignment the assigned assets are typically limited to rights or credits including, without limitation, receivables. In the case of trusts, however, there is no such limitation, and they may be used as vehicles for taking security over most forms of movable and immovable assets. Furthermore, the treatment of security assignments in the case of bankruptcy of the debtor had been the subject of legal debate. Certain doctrinal authority and case law had held that in such cases the security assignment should be treated as a pledge. While such characterisation does not invalidate the security, it implies a somewhat lengthier proceeding for realising the secured asset. Therefore, since 1995 trusts have tended to replace security assignments as a means of taking security.



11. Insolvency and Bankruptcy

The Argentine Bankruptcy Law No. 24,522, as amended (the "Bankruptcy Law"), contemplates two main insolvency proceedings: reorganisation and bankruptcy proper. The Bankruptcy Law also contemplates out-of-court arrangements between all or some of the creditors and the debtor, and these arrangements take place prior to entering reorganisation or liquidation proceedings and, subject to court approval, are effective *vis-à-vis* other creditors.

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

The Bankruptcy Law was re-enacted in 1995 and several reforms were made thereto. Previously, the *pars condictio creditorum* principle, which requires the equal treatment of all unsecured creditors, had been construed as barring the possibility of any contractual unsecured debt subordination (which is now admissible) upon bankruptcy or reorganisation.

Unlike some other jurisdictions, a reorganisation or bankruptcy proceeding in Argentina only commences when the court renders a judgement declaring the debtor subject to reorganisation or to liquidation. Thereafter, the reorganisation or liquidation, as the case may be, shall proceed.

11.1 Out-of-court Agreement

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

The agreement may be executed by means of a private instrument, with the signature of the parties and the representations invoked being certified by a Notary Public. The documents authorizing the executing parties, or an authenticated copy thereof, shall be attached to the instrument.

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

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

In order to request legal homologation it is necessary that the agreement be executed by an absolute majority of unsecured creditors, representing two thirds of the total unsecured liabilities. Once the agreement is approved by the relevant court, it is binding on all unsecured creditors, even on those that refused to execute the agreement.

Presentation of the agreement to the court must be made known by notices published in the newspaper of legal publications of the jurisdiction of the court and in one local newspaper with wide circulation.

Within ten days after the last publication of the notices, the creditors not falling within the scope of the agreement may oppose its homologation, but only on grounds of omission or exaggeration of the assets or liabilities or the



absence of the required majority. The opposition shall be substantiated with the debtor. If necessary, there shall be a ten-day term for the production of evidence and the judge shall issue a decision within ten days following the expiration of such term.

If there are no oppositions and the requirements as to form and submission are met, or the oppositions are rejected, the judge shall proceed to the homologation.

11.2 Reorganisation Proceedings

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

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

The application must include, *inter alia*, (i) the debtor's founding documents and charter (if applicable), (ii) an explanation of the causes which led to its financial difficulties, (iii) an updated and complete list of all assets and liabilities, (iv) a copy of the balance sheets for the three preceding fiscal years, (v) a list of all creditors with full details of all amounts outstanding, and (vi) a list of all pending judicial or administrative claims. In addition, the debtor must also deliver all commercial books to the court.

Within five days after the application has been filed, the court has to make a determination. To the extent the debtor has not complied with the requirements outlined above, the application may be rejected. Otherwise, the court will declare the reorganisation proceedings opened and, *inter alia*, (i) set a date upon which a receiver or trustee (*sindico*) will be selected by drawing lots, (ii) order publication of notices in the legal journals and other newspapers as required by law, (iii) establish a deadline for creditors to file ("*verificar*") their credits with such trustee (15 to 20 days after the notices referred in (ii) above have been published), (iv) issue a general injunction forbidding the debtor from disposing of any of its assets (which is recorded with all public registries), (v) order the registration of the reorganisation proceedings in the relevant public registries, and (vi) appoint a temporary committee of creditors (to be formed by the three largest unsecured creditors).

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

Persons (or managers of companies) undergoing reorganisation may not travel abroad unless prior notice is given to the court. Such trips may not exceed 40 days, unless court authorisation is obtained.

Once reorganisation begins, the debtor administers its estate under the supervision of the trustee; nonetheless, the debtor must obtain court approval (with prior notice given to the trustee and the committee of creditors) prior to engaging in most activities which are deemed to exceed the ordinary course of business as well as certain material transactions. In particular, the debtor is forbidden to enter into transactions for no consideration or which would adversely affect the interests of creditors with claims prior to the reorganisation. Transactions which do not comply with the above provisions may be deemed ineffective *vis-à-vis* creditors and may result in all of the debtor's estate being placed under the direct control of the trustee.



The court may, subject to certain conditions, authorise payment of certain amounts (for salaries and similar compensation) to workers prior to other creditors. In on-going agreements where both parties have outstanding obligations, the debtor is vested with discretionary powers (with the approval of the court after prior consultation with the trustee) to determine whether such agreement shall be fulfilled or terminated. If, 30 days after the reorganisation proceedings are opened, the debtor has not decided to continue such agreement, the creditor may terminate it (giving notice thereof to the debtor and the trustee).

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

The trustee must submit a detailed report to the court of each claim expressing his/her opinion thereupon and recommending the approval or rejection thereof. Within 10 days thereof, the court will decide on the admissibility of such filings. Thirty days after the above-mentioned report has been filed, the trustee must submit to the court a general report containing, *inter alia*, (i) an analysis of the causes which led to the debtor's financial difficulties, (ii) a complete description of the debtor's assets and liabilities, including an estimate of the sale value of such assets, (iii) a list of the accounting books and records utilised by the debtor and an indication of any failure to comply with any legal or accounting requirements, (iv) the date on which the debtor actually became insolvent, (v) a description of any transactions which may be declared ineffective *vis-à-vis* creditors, (vi) its opinion with respect to the classes of creditors proposed by the debtor, and (vii) the present book value of the company.

Within ten days after the court's decision regarding creditor's filings, the debtor must submit to the trustee, its creditors and the court a proposal for reorganisation, and this proposal may classify creditors according to the amount, security, nature or other reasonable distinguishing features of the credit. It is acceptable to subordinate certain unsecured credits to other unsecured credits. There must, however, be a minimum of at least three categories, namely: secured creditors, general or unsecured creditors and labour creditors. Within twenty days after the filing of the general report, the court will decide upon the classes of creditors and shall appoint the members of the creditors' committee (which shall include at least the largest creditor in each category). Then the debtor must submit a proposal for payment to the creditors in each category and must obtain the approval of such creditors within thirty days or within any longer term (not to exceed 60 days) determined by the court.

The proposals for payment may consist, *inter alia*, of (i) a discount, a refinancing of debts or a mix of both, (ii) the delivery of assets (including debt or equity securities) to the creditors, (iii) the incorporation of a company where unsecured creditors become shareholders, (iv) the restructuring of the debtor, (v) the administration of all or part of the debtor's estate by the creditors, (vi) the issuance of convertible or non-convertible securities, (vii) the granting of guarantees by third parties, and (viii) the capitalisation of credits. The same proposal has to be made to each creditor within each category; however, alternate proposals may be made to different categories. Each class of creditors must accept the proposal, and acceptance requires a majority of votes of creditors in writing within each category representing, in addition, at least two thirds of all unsecured debts (the consent of secured creditors is not required unless the debtor has conditioned its proposal on obtaining such consent or a proposal is made to them, in which case their unanimous approval is required); then, the reorganisation plan becomes effective and the debtor emerges from the reorganisation proceeding. The Court has the power to approve the plan if the majority is not met in one of the categories, subject to compliance with some requisites existing in the law.



11.3 Cramdown

Pursuant to the Bankruptcy Law, when the debtor is a legal entity such as a corporation (*sociedad anónima*), bankruptcy will not necessary follow if the debtor fails to obtain the necessary approvals for its reorganisation plan.

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

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

Five days prior to the term elapsing a hearing will be held in which the registered persons have to inform the court and interested parties of the progress of negotiations.

Judicial precedents have held that the voting impediments prescribed in the reorganization proceedings (i.e. the prohibition on voting by controlling shareholders) do not apply in the cramdown stage.

The first of the registered persons to obtain the required majorities is awarded the right to purchase the company equity for an amount of not less than the value of the company as assessed by the court. The value of the shares must be calculated by an expert appointed by the court following certain guidelines set out in the Law.

If the proposed purchase price is less than the one determined by the Court, the offeror, in addition to the agreement of the creditors, must also obtain the approval of shareholders.

The registered person who obtains the necessary consents must deposit an amount of not less than 25% of the offer as a guarantee for the compliance of the payment terms.

Once all these requirements have been complied with, the Court will approve the acceptance of the agreement and the transfer of equity to the buyer in a ten day period once the balance of the purchase price is paid. If the corresponding majorities do not accept the proposal submitted by the registered persons in the twenty day period, bankruptcy and liquidation will follow.

11.4 Bankruptcy

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

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



The judgement declaring bankruptcy, *inter alia*, (i) must properly identify the bankrupt person, (ii) order that the bankruptcy be recorded in all applicable public registries, (iii) order the bankrupt person and any relevant third parties to deliver the debtor's assets to the court, (iv) set a date upon which a receiver or trustee ("*sindico*"), who will act as liquidator, will be selected by drawing lots, (v) order the liquidation of the debtor's assets, (vi) issue a general injunction forbidding the debtor from disposing of any of its assets and ordering the recording thereof and of the bankruptcy in the relevant public registries, (vii) order publication of notices in the legal journals and other newspapers as required by law, and (viii) establish a deadline for creditors to file ("*verificar*") their claims with such trustee (within 20 days after the notices referred in (vii) above have been published).

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

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

Depending on the date when insolvency was first shown, the bankruptcy court may determine a preference (or "suspect") period of up to two years prior to the bankruptcy judgement. Certain acts which occur during this suspect period may be ineffective *vis-à-vis* other creditors by operation of law, namely, acts for which no consideration is given, or when a debt is paid prior to its stated maturity (by acceleration or otherwise) or when a security interest is obtained for a debt which has not matured and which was originally unsecured. Furthermore, certain acts may be declared by the court to be ineffective *vis-à-vis* other creditors to the extent the creditor had actual knowledge (or should have known) that the debtor was insolvent and the act was prejudicial to the other creditors (notwithstanding that the creditor whose act is under attack may show that such act has not damaged the other creditors).

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

The bankruptcy judgement will provide for some personal limitations on the debtor or the debtor's management, such as a restriction against leaving Argentina without the court's permission. It also has other consequences: all obligations of the debtor become due and payable; interest ceases to accrue (except for secured credits, which continue to accrue interest but only to the extent that principal plus interest does not exceed the value of the security); and all actions instituted against the debtor prior to the bankruptcy judgement shall be heard thereafter by the bankruptcy court and lawsuits against the debtor are suspended.

If termination pursuant to a breach of a contractual obligation by the counterparty did not occur or was not judicially claimed prior to the date of bankruptcy, clauses providing for the termination of an agreement in the case of breach of such counterparty's obligation (such as the occurrence of certain events of default) cannot be invoked in the event of bankruptcy of the defaulting party. Set-off shall be deemed perfected only when it has taken place prior to the date on which the debtor is adjudged bankrupt; hence, it requires that the obligations of both parties become due prior to the bankruptcy judgement.



All contracts entered into by the debtor must be honoured by the counterparty if all the obligations of the debtor under such contract have been fully discharged as of the date of bankruptcy. On the other hand, if the counterparty has fully discharged its obligations and at the date of bankruptcy there are obligations of such debtor which remain outstanding, the counterparty must file a claim for its credit with the trustee. However, if at the date of bankruptcy both parties have outstanding obligations, the creditor has to inform the court (within 20 days after notices announcing the bankruptcy are published) of any agreement with outstanding obligations and of its intention to request the termination or continuation of such agreement. The trustee has to render an opinion as to whether such agreements should be continued or terminated. The court, however, is vested with discretionary powers to determine whether such agreement shall be fulfilled or terminated within a short period of time. If the operations of the debtor have been interrupted, the agreement is suspended until the court reaches a decision in connection with the contract's termination. If the contract is continued, the creditor would be entitled to full payment of the amounts owed to it under the agreement being continued. Nevertheless, 60 days after notices announcing the bankruptcy have been published, if the court has not reached any decision, the creditor may request the termination of the agreement, and such agreement would be terminated unless the court notifies the creditor of its intention to continue such agreement within 10 days following such petition. In cases of urgency, the court may shorten the periods referred to above.

Certain other agreements (such as master agreements, agreements to be performed over a certain period of time or agreements where the personal involvement of the debtor is required) are terminated by operation of law upon the declaration of bankruptcy.

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

The following credits, *inter alia*, have a special preference, in order of decreasing priority: (i) construction, improvement or maintenance expenses over the relevant asset (to the extent that such asset is still in the debtor's possession), (ii) salaries and related compensation of workers over the proceeds of the sale of merchandise, raw materials and machines located in the debtor's premises, (iii) specific taxes and duties due over the asset to which the tax applies, and (iv) mortgages and pledges over the proceeds of the sale of the mortgaged or pledged asset.

The following credits have a general preference, in order of decreasing priority: (i) labour credits not subject to a special preference, (ii) the principal amount of social security debts, (iii) funeral, medical and certain personal expenses of individuals, and (iv) the principal amount of any taxes and duties due. Credits with a general preference may not absorb more than 50% of the total assets of the debtor. Unless subordinated, unsecured creditors will be paid on a *pari passu* basis.

The bankruptcy court has the power to extend the bankruptcy of the debtor to related companies when (i) a person has used the assets of the debtor as its own, thereby defrauding creditors; or (ii) a parent (or otherwise controlling) company of the debtor has improperly manipulated the assets of the debtor for the parent company's own benefit or for the benefit of the economic group of which the parent company forms part; or (iii) a person's assets are commingled with the assets of the debtor.

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



completed and all distributions to creditors have been made, the bankruptcy proceedings conclude and the debtor will be discharged.



12. Mining

12.1 Introduction

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

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

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

The law considers development concessions (including the mine and its deposits, as well as the buildings, machinery, cars, etc. used in the development of the mine) to be immovable property distinct from the title to the surface land on which they are located. Once the discoverer's rights are incorporated into public deeds and registered with the Registry of Mines, they provide title to the development concession. Development concession titles are irrevocable rights regulated by civil law rules similar to those regulating immovable property. Development concessions may therefore be transferred and mortgages may be granted over them. Once extracted, as minerals are movable property they may also be pledged as security for financing purposes.

The Mining Code allows provinces to reserve for themselves certain mining properties in which they may perform prospecting activities using their own mining companies or award rights to private mining companies through public auctions. Exploration and mining rights under these provisions are subject to specific regulation. At present, the number of areas reserved by provinces is in practice insignificant.

Sampling and prospecting may be conducted freely (no government permit or concession is required), except in areas where mining concessions have already been granted to third parties, or in fenced or cultivated lots, urban areas, areas reserved for national defence, or areas reserved for public use. In these cases, written permission from the surface-owner, concession holder or relevant authority, is required.

12.2 Distribution of Regulatory and Enforcement Powers

Mining laws and regulations are enacted and enforced by the federal government, each provincial government and, to a lesser extent, each municipality.

The basic legal framework governing mining rights (including the Mining Code) was enacted by the Federal Congress. The enactment of procedural regulations is however vested in each provincial legislature. Each province organizes its own mining authority which deals with the granting and registration of exploration and development concessions and compliance with mining regulations (including safety and, in most cases, environmental standards).



Regulations in connection with tax incentive programs are enacted either by the Federal Congress or the provinces depending upon whether the relevant tax is imposed by the federal government or the provinces. The main mining tax incentive program has, however, been enacted by a federal law to which the provinces have adhered. The registration and enforcement powers under this law are vested in the National Mining Secretary (the "NMS").

12.3 Classification of Mines

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

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

Second class mines are divided into two categories: the first type comprises metallic sands and precious stones which are found in river beds, on the banks of water courses, or at the facilities of abandoned mines. Minerals falling into this category may be mined by anyone without having to obtain a concession. The second type includes saltpetre, salines, peat bogs, metals not included in the first class and low-grade aluminous soils, abrasives, ochres, resins, steatite, barium sulphate, low-grade copper ores, graphite, fine white clay, alkaline salts or earthy alkaline salts, amianthus, bentonite, zeolite and permutite or permutitic minerals. The owner of the surface rights has a preferential right to deposits falling within this subdivision, but must have his/her claims officially demarcated.

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

The information below concerns the first class of mines.

12.4 Exploration of Mineral Resources

Prior to the commencement of exploration works, the mining company must obtain an **exploration concession** from the provincial mining authority (whether the land to be explored is public or private property). The exploration application must include, *inter alia*, the boundaries of the territory requested for exploration, a summary description of the program of the works to be performed and the equipment and machinery to be utilized. The unauthorized interruption of this program during the exploration term may trigger the revocation of the exploration concession.

The exploration concession gives to the grantee the exclusive privilege to explore and, eventually, obtain a **development concession** to work any deposit of any mineral (this right is not limited to those mentioned in the petition) discovered within the area of the grant. The exploration concession also includes the right to develop discoveries made by third parties (including the surface-owner) within the boundaries of the permit.

12.5 Development of Mineral Resources

If a discovery is made during the course of exploration, the discoverer must register the discovery with the provincial mining authority. Samples of the ore discovered must be included with the discovery presentation.



Upon registering the discovery, the discoverer may apply to double the territory that he/she is entitled to develop. This territory may not be explored nor developed by third parties until the end of the staking proceedings. Within 100 days (which may be extended up to 200 days) from the registration date of the discovery, the discoverer must perform the work necessary to establish the direction, inclination, thickness of seam, and type of the discovered ore. Meanwhile, if certain conditions are met, the discoverer is entitled to begin developing the mine.

The next step is to define the final limits within which the concession may be developed. The discoverer must file a petition for a **development concession** with the mining authority. Notices are published and neighbouring mines and other interested parties are given the right to challenge the claim. Finally, the mine is demarcated by the mining authority, the discoverer then proceeds to stake the mine and the development concession becomes effective.

12.6 Tax Incentive Schemes

12.6.1 *Tax Incentives under the Mining Code*

The Mining Code provides for a five-year exemption from all federal, provincial and municipal taxes (present or future) on the development, revenues and property of the mine and products, facilities, machinery and equipment utilized in respect of such exploitation. The five-year period begins to run upon registration of the development concession. Development fees, utility charges and local stamp taxes are excluded from this exemption. The benefit derived from this provision has, in practice, been fairly minimal since the registration of development concessions normally takes place some five or more years before actually starting operations.

The Mining Code exempts operators from the payment of development fees for three years as from the date of the grant of the development concession.

12.6.2 *Tax Incentives under Law No. 24,196*

Federal Law No. 24,196 enacted in 1993 provides for a mining incentive scheme which mainly consists of tax benefits. Further regulation pursuant to this scheme at the federal level is embodied in Regulatory Decrees No. 2686/93 and 1089/03 and there are additional regulations enacted from time to time by the law's enforcement authority, the NMS. In addition, Law No. 24,402 enacted in 1994, provides for special regulation for the financing or reimbursement of Value Added Tax payments made by mining enterprises.

The mining incentive scheme provided for by Law No. 24,196 applies to individuals or companies engaged in mining exploration and development activities in Argentina and which are incorporated in Argentina or, if incorporated abroad, are authorized to do business in Argentina. In order to be entitled to these benefits, individuals or companies must register with the NMS.

Mining suppliers may also register as such with the NMS in order to be granted the tariff exemption on importation of capital goods.

Mining activities covered by the scheme are: prospecting, exploration, development, preparation and extraction of first, second and third class minerals. Crushing, milling, pelleting, sintering, briquetting, primary elaboration, calcination, melting, refining, sawing, carving, polishing and burnishing processes of the extracted minerals, and the by-products resulting thereof, are also included if certain conditions are met.

The incentive scheme does not apply to (i) the oil and gas industry; (ii) cement obtained from a calcination process; (iii) the elaboration of ceramics; and (iv) sand and stone used in the construction industry.



12.7 Specific Tax Incentives

12.7.1 Tax Stability

The incentive scheme provides for a 30-year tax stability with regard to taxes in force at the time the feasibility report is submitted. Tax stability means that the aggregate tax burden upon the beneficiaries cannot increase, as a consequence of any increase or new enactment of, any taxes, duties (including export duties) or charges, whether federal, provincial or municipal. Furthermore, if taxes are abrogated or tax rates are decreased, those benefiting from the regime will have the benefit of any such lower rates or abrogation.

Direct taxes are included in the fiscal stability benefit granted by the Law. "Direct Taxes" mean such taxes in which the payment obligation is borne by the mining company, which has no legal grounds to be reimbursed.

Indirect taxes are excluded from the fiscal stability. "Indirect Taxes" mean such taxes in which the taxpayer is able to obtain a reimbursement of the amount of the tax which is due from a third party.

The stability does not cover (i) changes in foreign exchange conversion rates, (ii) export related tax reimbursements, repayments and/or refunds, nor (iii) value added tax.

12.7.2 Deductibility Benefits

Each year beneficiaries may deduct from their income tax statement 100% of the amounts invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works performed for the purpose of determining the technical and economic feasibility of the project. In cases of expansion of existing projects or the starting of new projects, the above referred deductions may be recognized in the fiscal year in which the production commences. These deductions may be made irrespective of their treatment as an expense or investment under the general income tax law and therefore in effect may allow persons benefiting from the scheme to deduct certain costs twice.

The above paragraph does not apply to costs incurred prior to the registration with the NMS nor to the costs associated with the payment of exploration fees.

In the event of new projects or expansions or existing mining projects, the deduction might be performed for a maximum term of five years, as from the date of commencement of the production process.

12.7.3 Accelerated Depreciation Benefits

Investments made by beneficiaries in respect of housing, transportation, construction of plant and equipment for the necessary infrastructure for the mining activity may be depreciated over three years, as follows: (i) 60% during the first fiscal year, and (ii) 40% in equal amounts during the following two years (i.e. 20% + 20%).

In the case of investments for the acquisition of machinery, vehicles, equipment and installations not included in the above paragraph, depreciation is allocated into three equal parts during a three-year period as from the date upon which such assets are ready to be used.

Such goods which are to be amortized must remain in the patrimony of the beneficiary for its entire lifetime or until the end of the production process, and must be used in the mining activities.



12.7.4 Income Derived from Capital Contributions

Income derived from the mines and mining rights, which are utilised as payment for the subscription of shares of registered beneficiary companies is exempted from income tax. Such contributions must however be maintained on the beneficiary's books for a minimum term of five years, except where otherwise authorized by the NMS. The relevant capital increase and issue of shares is also exempted from stamp taxes.

12.7.5 Import Regulations

Beneficiaries are exempted from all import duties and other charges (including statistical tax but excluding import service charges and Value Added Tax) in relation to the import into Argentina of (i) capital goods (including ancillary machinery or spare parts – new or used ones) and (ii) other goods as determined by the NMS, necessary for the performance of activities covered by the incentives scheme on mineral deposits located within Argentine territory.

Companies which render services to the mining industry (i.e., drilling, transportation companies, etc.) are also beneficiaries of the above exemption, provided that the mining activity represents certain percentage of its total revenues, as established from time to time by the authorities.

12.7.6 Stamp Tax

Some provinces have eliminated the stamp tax on agreements concerning the following stages of a mining project: (i) prospection; (ii) exploration; and (iii) development.

12.7.7 Royalties

Being the owners of the mineral resources, each of the provinces (or the federal government should the mines be located in federal lands) may charge a levy upon mining companies calculated as a percentage of the value of the mineral extracted. Law No. 24,196 establishes a cap of 3% of the value of the extracted mineral. Provinces that have adhered to the federal regime, are prohibited from imposing royalties in excess of this cap level.



13. Telecommunications

13.1 Background. Privatization

Argentine telecommunications services were nationalized by the Peronist Government in 1946 and were run for the following 44 years by a state owned company called ENTEL. In 1990 telecommunications services were privatized by the first Menem Government. To implement the privatization process, the Argentine Government enacted rules both to regulate the bidding process and also to regulate the telecommunications market after privatization (the "Privatization Rules").

The main features of the Privatization Rules were the following:

- (i) The country was divided into two regions of almost equal importance (North, 46.7%, and South, 53.3%) with the Federal District (the City of Buenos Aires) and Greater Buenos Aires (AMBA) being split between the two licensees.
- (ii) Two companies were created (Telco North – today, Telecom Argentina S.A. and Telco South – today, Telefónica de Argentina S.A., the "Telcos") which were to become the licensees for each region to provide basic telephony services (BTS).
- (iii) Another two corporations were created to be jointly owned by the Telcos. These corporations were to provide: (a) international telecommunications services, Telintar S.A. and (b) national data transmission services and other services rendered under a competitive regime, Startel S.A.-.

The Telcos (in their respective regions) and Telintar were granted exclusivity or monopolistic rights for an initial 7-year period, which expired in November 1997 ("Exclusivity Period"). Provided certain goals were met during that period, the Telcos were to be granted a subsequent 3-year exclusivity period ("Extended Exclusivity Period") immediately following the 7-year period.

The Privatization Rules provided that, at the end of the Exclusivity Period or the Extended Exclusivity Period (whichever is relevant):

- (a) the Telcos had the right to be granted licenses to (i) render data transmission and other services in competition and (ii) render BTS in the area originally allocated to the other Telco;
- (b) other licenses for the rendering of BTS could be granted to other persons through public bids and,
- (c) licenses for the rendering of services other than BTS could be granted, except those that required the use of spectrum. In this latter case, the regulatory authority could call for a public bid to grant the frequencies for the use of radio spectrum.

Those telecommunications services, which did not fall within the definition of BTS, were to be rendered on the basis of free competition.

13.2. Gradual Deregulation

In 1997, when the Exclusivity Period ended, the Government decided to partially extend the exclusivity and altered some important aspects of the Privatization Rules, namely, it reduced the period of extension of the Exclusivity Period and providing for a gradual deregulation of the market.



13.2.1. *The Decrees of 1998*

In March 1998 Decrees No 264/98 and No 266/98 modified the Privatization Rules by imposing a timetable for the liberalization of the market, different from the one originally provided for in the Privatization Rules. The Telcos were granted an extension to the Exclusivity Period of two years instead of the three years originally provided for. Additionally, this new regime allowed two new BTS providers to enter the market in November 1999.

13.2.2. *Final Step towards Deregulation – The September 2000 Decree*

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

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

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

13.2.2.1 *Licensing Rules for Telecommunications Services*

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

The Secretary of Communications ("Secom") will grant the license once the applicant has submitted all the information and/or documentation required in the Licensing Rules for Telecommunications Services, and the Secretary must keep a register of the licenses and the services covered by them. The information and/or documentation to be filed consists generally of the following, in addition to corporate and personal documentation of the person or entity requesting the license:

- (a) description of the services to be rendered;
- (b) technical plan and schedule including the description and location of the network for the first three (3) years of service; and
- (c) investment plan consistent with the technical plan.

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

The granting of a license is independent of the existence and designation of the means required for the provision of the service. If a service requires the use of radio spectrum frequencies, the granting of the license does not impose an obligation upon the Argentine State to guarantee availability in the radio spectrum.



The applicant must therefore make a separate application to Secom for the use of radio spectrum frequencies which may or may not be granted. Providers may only begin to render telecommunications services once these services have been registered.

Both the lease of telecommunications infrastructure to service providers and the resale to third parties of telecommunications services offered by a provider, require a Telecommunications Service License. There is an application fee for the obtaining of a Telecommunications Service License of A\$ 5,000.

13.2.2.2. Universal Service General Rules

The Universal Service General Rules govern the provision of telecommunications services to each inhabitant in Argentina taking into account their different circumstances.

The Universal Service is a defined set of telecommunications services that must be provided with a specific quality and must be accessible at affordable prices for all users, regardless of their geographic location. The aim is for the whole population to have access to essential telephony services, notwithstanding regional, social, and economic differences and physical disabilities.

After 1 January 2001 each telecommunications services provider must contribute an amount equivalent to 1% of its total income derived from the rendering of telecommunications services (minus taxes and fees relating thereto) to a fiduciary fund created to finance the Universal Service

13.2.2.3 National Interconnection Rules

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

All telecommunications service providers are required to grant interconnection to other telecommunications service providers on a non-discriminatory, transparent and proportional basis, based on objective criteria. The parties may agree on the specific interconnection terms and conditions. However, should the parties fail to reach any agreement, or should a third party be affected, or if Secom considers it appropriate for public policy reasons, it is empowered to determine these terms and conditions. All interconnection agreements must be filed with Secom.

The National Interconnection Rules ("NIR") provide that costs for essential facilities supplied by providers with dominant power are to be calculated on the basis of the Long Run Incremental Costs ("LRIC"). Until the mechanism to determine such a cost is established, the Secom may apply the interconnection referential prices contained in the NIR (e.g., after November 2002 A\$ 0.00974 per minute for origin and termination of calls and A\$ 0.00266 per minute for transit). A provider will be deemed to have a dominant power in connection with any given service where the revenues derived from its services exceed 75% of the aggregate revenues generated by all providers of the same service, in a given area or nation-wide, as the case may be.

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

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

Secom will authorize the use of frequency bands to provide telecommunication services through: i) a public bidding processes or auctions, or ii) upon request.

Since authorizations and/or permits to use radio spectrum frequencies will be granted on a revocable basis. Secom may fully or partially replace, modify or cancel such frequencies without the authorized party involved having any right to an indemnity in respect of any such modification or cancellation.



13.2.3 Implementing Deregulation – Open Issues under Discussion

Although the New Regulations are already in effect, there are certain specific issues relating to their full implementation that have yet to be defined, such as:

- (i) carrier selection for long distance services,
- (ii) the definition of Long Run Incremental Costs,
- (iii) unbundling of the local loop,
- (iv) collocation,
- (v) number translation services (NTS),
- (vi) number portability, and
- (vii) the Universal Service Fiduciary Fund.

On 6 February 2003, by Resolution MIV No 75/03, the Rules for Carrier Selection for Long Distance Services were enacted. However, implementation of these rules is still evolving.

Secom has formed two Working Groups to determine the referential prices of the LRIC for the collocation and unbundling of the local loop, and to determine the referential prices and minimum interconnection conditions of NTS services, as provided for under the National Interconnection Rules. These Working Groups have issued their decisions and public consultations on both issues have taken place. Secom has however not yet passed any resolution in respect of them.

Under the National Interconnection Rules, number portability is a right of the user of telecommunications services and the Secom should determine the terms and conditions for licensees to provide number portability. Here again a public consultation regarding the implementation of number portability has taken place but Secom has yet to publish any resolution in respect of it.

The Secom has also recently released a set of draft Rules for the Administration of the Universal Service Fiduciary Fund, which has also been the subject of a public consultation, but no resolution of Secom has yet been published.

13.3 Satellite Issues

Set out below is a summary of the requisites to be complied with in order to obtain an authorization to be a provider of satellite facilities to be used in Argentina. The requisites will vary depending upon whether the application is made in respect of an Argentine or a non-Argentine satellite

13.3.1 Applicable Legislation

The rules relating to the provision of satellite facilities by geostationary satellites in both the fixed service (FSS) and the broadcasting service (BSS) are contained in a number of resolutions of the Secom ("Resolution 14").

Resolution 14 distinguishes between Argentine and non-Argentine satellites. Argentine satellites are defined as those satellites registered with the International Telecommunications Union (ITU) for which the Argentine Government is the notifying administration. Non-Argentine satellites are those registered with the ITU by an



administration which is not the Argentine Government. Owners of satellites receive the same treatment, whether they be public entities or private entities.

As far as Argentine satellites are concerned the Argentine Satellite System ("Nahuelsat") was granted a period of exclusivity for 7 years as from the date that this system came into service during which time no Argentine satellite system could be authorized. This period of exclusivity expired on 30 January 2004.

As far as non-Argentine satellites are concerned:

a) a non-Argentine satellite may render Ku band satellite capacity only if a reciprocity agreement is signed between Argentina and the administration that has registered the non-Argentine satellite with the ITU and one or more of the following conditions are met:

- (i) it is demonstrated that there is no capacity available in any Argentine satellite;
- (ii) it is demonstrated that the Argentine satellite capacity is offered at abusive prices or there is a monopolistic behavior that could be construed as an abuse of a dominant position;
- (iii) the Argentine satellites are not able to provide satellite facilities due to failures or technical problems affecting the operation of the satellite or other force majeure reasons;

b) a non-Argentine satellite may render C band satellite capacity only if this band is the only band in which the satellite facilities will be rendered, and provided, also, that a reciprocity agreement is signed between Argentina and the administration that has registered the non-Argentine satellite with the ITU.

13.3.2 Procedure to obtain the authorization of a non-Argentine satellite

A company or person the owner of a non-Argentine satellite willing to render satellite facilities within Argentine territory should apply to the Secom for the corresponding authorization which requires the following:

- (i) written petition stating the intention to provide satellite facilities;
- (ii) appointment of a technical representative;
- (iii) demonstration of legal, economic and technical capacity and business expertise, including documentation evidencing the capacity of the company or of its members;
- (iv) description of the satellite or satellites to be authorized. The applicant must demonstrate compliance with the conditions referred to in sub-paragraphs (i), (ii) and (iii) of paragraph 13.3.1 above, as the case may be;
- (v) the applicant must present a preliminary draft of the general and technical specifications of the project.

An authorization granted to a company to provide satellite facilities within Argentina only relates to those satellites expressly included in the application.

13.3.3 Equipment and telecommunications infrastructure

All equipment (including the reception terminals for mobile or fixed satellite services) to be used to provide or receive telecommunications services should be either authorized or homologated prior to its use in Argentina. Homologation is the procedure that must be followed to allow the relevant equipment to be commercialized in Argentina. This procedure may be effected either by the manufacturer (if it has a presence in this country) or by the seller of the equipment. Authorization is the procedure to be followed if it is only intended to use the



equipment in Argentina as opposed to its commercialization in Argentina. Both the homologation and the authorization are the means by which the CNC controls the quality and technical standards of the equipment used in telecommunications.

13.3.4 Fees for the use of the spectrum

Pursuant to Resolution No 10 SETYC/95 each user of radio electric stations, systems and/or services must pay a monthly fee to the CNC, of a varying amount depending on the service, system or station used.



14. BROADCASTING

14.1 Generalities

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

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

In the absence of a specific provision relating to Complementary Services, the general provisions of the Broadcasting Law apply indistinctly to both Broadcasting Services and to Complementary Services.

Licenses to own and operate a Broadcasting Station with VHF frequency are granted by Presidential Decree after a bidding process has been carried out by the Argentine Federal Broadcasting Committee (*Comité Federal de Radiodifusión*, "COMFER"). Licenses to own and operate Complementary Services are granted by COMFER. Licenses are granted for periods of 15 years. The licensee also has a right to renew for an additional 10 years upon the expiry of the 15 year period.

The capital stock of a licensee must consist of registered stock. Transfers of shares of licensee companies may not take place without an authorisation by means of a Presidential Decree or, if the transfer is made to existing shareholders, an authorisation from COMFER. Any transfer of capital stock in a licensee made without the relevant authorisation may result in the revocation of the license.

Amendments to the licensee's by-laws are subject to COMFER's approval. Appointments of members of the board of directors, statutory auditors, managers and agents must be notified to COMFER within 30 days from the date of the relevant appointment.

Generally speaking, but subject to the treaty exception indicated below, licenses are only granted to Argentine citizens or to companies constituted in Argentina. Individuals holding a license or the shareholders of the licensee (as the case may be) must satisfy, during the whole of the term of the license, *inter alia*, the following conditions:

- (i) be Argentine native or naturalized citizens;
- (ii) be of good moral character and cultural aptness, both evidenced by records which may be objectively confirmed;
- (iii) have adequate financial capacity for the investment to be effected and be able to demonstrate the origin of the funds to be invested; and
- (iv) not have any corporate affiliation or relationship with, or be under any form of control of, any foreign broadcasting or media companies, unless so authorized by treaties signed by Argentina with other countries.

Pursuant to a Decree enacted in September 1999, where the partners or shareholders of a licensee are also companies, the requirements referred to above will be applied not only to directors of the licensee company but also to the directors (but not the shareholders) of the company which is a shareholder of the licensee company.



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

Licenses may be revoked, *inter alia*, in the event of the following:

- (i) misrepresentation as to the ownership of the license;
- (ii) false statements by the licensee with respect to ownership of the assets "essential" to the service;
- (iii) monopoly behaviour; and,
- (iv) delegation of the operation of the service to another person or entity.

14.2 Bilateral Investment Treaties

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

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

The treaty between the U.S. and Argentina (the "Treaty") was approved by the U.S. Congress in November, 1993 (Published in Congressional Daily Digest on 17 November 1993) and by the Argentine Congress (Published in Official Gazette on 12 September 1994).

The Protocol to the above Treaty lists separately the sectors in which Argentina and the U.S. expressly reserve the right to impose or maintain exceptions to the "national treatment" enshrined in the Treaty. While the U.S. reserves the right to except activities such as "*ownership and operation of broadcasting or common carrier radio and television stations*" and "*provision of common carrier telephone and telegraph services*", Argentina did not reserve any such rights in areas such as Broadcasting Services, cable TV, MMDS, communications or similar activities.

Consequently, US investors are therefore permitted to develop related activities or make investments on terms similar to those applicable to Argentine investors or corporations. Pursuant to Section 75, subsection 22 of the Argentine Constitution, the provisions of treaties prevail over those contained in Argentine laws. Therefore, Section 45 of the Broadcasting Law only applies to the extent that it does not contravene the aforementioned Treaty provisions and individuals or companies of United States origin may therefore apply for the award of a license for the installation, operation and exploitation of Complementary Services. Such persons may also associate with or become partners with holders of licenses of the above-mentioned services.

Consequently COMFER enacted on 27 March 1995, Resolution No 350/95, which implements a rule providing the conditions and requirements to be complied with by individuals or companies of U.S. origin, falling within the provisions of the Treaty, when such persons or entities apply for licenses to install, operate and exploit Complementary Services, or when they seek to associate or become partners with holders of licenses of these kinds of services.



14.3 The Media Ownership Law

On 18 June 2003 the Argentine Congress enacted the Media Ownership Law, which in principle restricts the participation of foreign investors in “communications media companies” to 30% of the entity’s voting capital stock. The Media Ownership Law provides that “communications media companies” include the following:

- (i) newspapers, magazines, journals and editorial companies in general;
- (ii) broadcasting services and complementary broadcasting services under Law No 22,285;
- (iii) producers of audio-visual and digital content;
- (iv) internet access providers;
- (v) street advertising companies.

Furthermore, foreign investors are restricted from obtaining ownership of Argentine “communications media companies” which are subject to legal reorganization proceedings.

The Media Ownership Law establishes that it shall not be applicable to those media companies already controlled by foreign investors at the time of the enactment of the law, and those awaiting approval for the transfer of the corresponding license.

Bearing in mind that the Media Ownership Law has been recently enacted, there are no precedents as to how the Argentine regulatory agencies or in due course the Supreme Court will interpret its scope, effects and application.

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