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The International Comparative Legal Guide to:
Gas Regulation 2009

GLG

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1 Overview of Natural Gas Sector

1.1 A brief outline of Argentina's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; importation and exportation of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.

Gas exploration and exploitation activities can be conducted by public or privately owned entities, but only privately owned entities can provide gas transportation and distribution services. Two companies own Argentina's natural gas transportation pipelines' network that was divided into two sectors -the North and the South regions-, and nine companies are in charge of natural gas distribution.

In 2005 Argentina had gas reserves for 406,286,000,000m³.

Due to supply shortages in peak days caused by the increase of the local market demand, Argentina has limited -and in some cases suspended- gas exportations. Notwithstanding, in September 2008 Argentina exported gas to Chile and Uruguay for a total volume of 40,540m³.

On the other hand, in September 2008 Argentina imported 50,318m³ of gas from Bolivia.

Finally, there are no gas liquefaction facilities, but there is one re-gasification plant (Peak Shaving plant owned by Gas Natural Ban).

1.2 To what extent are Argentina's energy requirements met using natural gas (including LNG)?

According to the information provided by the Secretary of Energy of the Argentine Republic (the "SE"), in 2004, Argentina's energy matrix was composed: (i) 50% by natural gas; (ii) 38% by oil; (iii) 5% by hydroelectricity; (iv) 3% by nuclear energy; and (v) 4% by alternative energy sources.

1.3 To what extent are Argentina's natural gas requirements met through domestic natural gas production?

Local demand of natural gas is supplied mostly by local production. Natural gas is only imported from Bolivia through pipelines. In 2006, the state owned company *Energía Argentina S.A.* ("ENARSA") -devoted to the development and transportation of

hydrocarbons- entered into a gas purchase agreement with *Yacimientos Petrolíferos Bolivianos*, which establishes the following volumes of gas to be imported from Bolivia to Argentina: (i) 7,700,000m³ per day for 2007; (ii) up to 16,000,000m³ per day for 2008 and 2009; and (iii) 27,700,000m³ per day for the term between 2010 and 2026.

1.4 To what extent is Argentina's natural gas production exported (pipeline or LNG)?

According to the information provided by the SE, in November 2008 Argentina has exported natural gas to Chile (32,359m³) and Uruguay (8,181m³) for a total quantity of 40,540m³.

2 Development of Natural Gas

2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

Development of natural gas reserves is mainly regulated by Hydrocarbons Law No 17,319 (the "Hydrocarbons Law"), Transportation, storage, distribution and commercialisation is mainly regulated by Law No 24,076 (the "Gas Law").

Mineral rights are vested on the National or Provincial States depending on its location. Deposits located within 12 miles of the coast and the external limits of the continental platform correspond to the National State; those located within the territory of the provinces and within 12 miles of the coast of each province, to the corresponding Provincial State.

The authorities in charge of gas regulation differ depending on the stage of the process, location of the deposits and the date of the corresponding permits and authorisations.

The SE (Federal Government) is in charge of regulating the exploration and production at national level (continental platform) and for areas granted before November 2006 and not transferred to the Provinces. As from November 2006, that power has been transferred to the provinces where the deposits are located.

The Gas Regulation National Authority ("Gas Authority") is in charge of regulating the transportation, distribution and commercialisation.

2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Exploration and exploitation rights are granted by the National or Provincial States upon request or public bids, depending on each area, and in the form of authorisations, permits and concessions. The Hydrocarbons Law states that participants may request: (i) soil survey authorisation; (ii) exploration permits; and (iii) exploitation concessions.

The terms and conditions under which these rights are granted are those resulting from the Hydrocarbons Law and the specific terms and conditions for each authorisation, permit or concession. They are granted for a limited time and can be early terminated upon breach by the grantee of the applicable terms and conditions. Please refer to question 2.3 for a more detailed description of these rights.

2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

The soil survey authorisation is granted on unexplored and unreserved areas, but it does not grant its holder the right to perform exploitation or any other economic activity. At the end of the term, the information obtained must be delivered to the SE. A surface owner prior permit is required.

Under an exploration permit its holder is entitled to explore, construct the required infrastructure, and have a preference to exploit the area. Rental and royalties must be paid, and committed investments must be completed.

Under an exploitation concession, its holder is entitled to exploit the area, extract the hydrocarbons, build and operate the required facilities and obtain a transportation concession. Rental, royalties and taxes must be paid, and committed investments must be completed.

2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?

Currently, the State does not own natural gas reserves; however, through ENARSA, it is seeking participation in the oil and gas market.

2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?

Holders of exploration permits and exploitation concessions must pay a canon or rental fee, as well as a royalty once exploitation has commenced.

In an exploration permit the rental fee is calculated taking into consideration the extension of the area and the term of the permit. In turn, in exploitation concessions it is calculated based on the extension of the area. Both are payable annually, at the beginning of each period, and are adjustable by the variation of crude oil prices.

Royalties are calculated on production at the up hole ("*boca de pozo*") at 12%, but they can be reduced to as low as 5%. They must be paid on a monthly basis in cash but the State may request payment in kind (i.e. gas) provided that decision is informed with

90 days advance notice, and that payment method is maintained for at least six months.

In addition to that, exported natural gas is subject to a withholding customs duty that varies depending on the destination.

2.6 Are there any restrictions on the export of production?

Export of production is subject to the prior approval by the National State. Due to supply shortages in peak days caused by the increase of the local market demand, Argentina has limited -and in some cases suspended- gas exportations. In 2004, SE implemented a "Program of Rationalization of Natural Gas Exports", indicating that exportations can be made only after domestic customers are supplied.

2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?

According to Decree 2703/02, natural gas producers must transfer into Argentina at least 30% of the funds resulting from the exports of natural gas. The remaining 70% is subject to the general rules applicable to export activities under Decree N° 1638/01, which states the general principle that proceeds from exports must also be transferred into Argentina under certain terms and conditions, allowing the application of exceptions to that obligation (i.e. exports finance, restructured loans, etc.).

2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?

Transfer of natural gas permits and concessions is subject to the prior approval of the authority. The transferee must comply with the conditions and requirements requested to the transferor and the intervening notary public shall not be able to execute the corresponding transfer document until the authorisation is granted.

2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?

Depending on the exploration or exploitation of proposed investments, holders of natural gas development rights must meet certain economic and financial conditions. Specific security or guarantees may be requested to secure the maintenance of the offer or the fulfilment of the proposed investment. The value of the securities shall be adjusted every three months considering the development of each project.

2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?

Yes. If rights to develop natural gas reserves are used as security for loans granting the creditor the right to own the pledged rights upon breach, then, the prior authorisation indicated in question 2.8 shall be required. Participations in developments can be booked for accounting purposes.

2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?

In connection with Health and Safety issues, Law No 19,587 provides for the general framework for hygiene and safety at the work place. Such law establishes rules to: (i) preserve human life and keep the psychological and physical integrity of workers; (ii) prevent, reduce, eliminate or isolate the risks at the work place; and (iii) stimulate and develop a positive attitude towards prevention of employment accidents and diseases. Employers must: (i) conduct a pre-hiring medical examination on each employee; (ii) maintain the machinery and other working elements in good condition; (iii) install the necessary equipment for elimination of gases, vapours and other harmful particles in suspension; (iv) maintain the electric supply network and water supply in good condition; (v) eliminate, isolate or reduce harmful noises and/or vibrations; (vi) install equipment for fire protection; (vii) make available adequate first aid services; (viii) comply with hazardous material regulations; (ix) install safety signs in visible places; (x) teach safety and hygiene regulations and practices to its personnel; and (xi) report any and all accident and/or on-the-job sickness.

2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?

SE's Resolutions establish the terms and conditions for the temporary or definitive abandonment of hydrocarbons facilities. If located at urban zones, the abandonment shall always be final; in other areas, the holder can choose based on the technical and investment conditions. Four years before the expiration of a concession, or upon total or partial reversion of the area, its holder must deliver a report detailing the type of abandonment to be followed, and the corresponding procedure.

3 Importation / Exportation

3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

Exports above the volumes corresponding to year 2003 are subject to a case-by-case authorisation. Additionally, the exploitation concessions can be early terminated upon breach of the domestic supply priority principle referred in question 2.6.

4 Transportation

4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Transportation of natural gas is mainly regulated by the Gas Law and its regulatory Decrees. Under that legislation, transportation shall be made by privately owned entities upon the granting of the relevant licenses, concessions or permits (the "Authorisations" or individually an "Authorisation") by the Executive Branch of the

Argentine Republic (the "Executive Branch"). The National and Provincial States can only provide transportation services if there are no private entities that can be awarded with the pertinent Authorisations in a specific area.

On the expansion of the natural gas transportation system, Law No. 26,095 imposes special fees to the users of the transportation system which shall be used to expand the natural gas transportation pipelines network all across the country.

4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

To construct and operate natural gas transportation pipelines a private entity must be awarded with a concession from the national authority (international or inter-provincial transportation) or provincial authority (transport within the province). Under Law No. 26,197 the Executive Branch is the competent authority for granting Authorisations when gas is transported across two or more provinces, or when those activities are performed to export natural gas. On the contrary, when gas is transported within one province and the gas is not destined for exportation, such province shall grant the concession. Authorisations are granted for 35 years and can be extended for ten years.

4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

The holders of Authorisations shall obtain the necessary land to construct pipelines by requesting easements to the competent authority. Opposition by surface owners or disagreements on the amount of potential damages shall not suspend or prevent the construction of pipelines, as long as the licensees or concessionaires give sufficient guarantee for any potential damage.

4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

Gas transporters must allow free access to their systems to every third party without discriminating, only in respect of such systems' capacity that is not already destined to supply the existing demand. Transporters cannot give any advantage or preference to any third party, unless such preferences or advantages are based on objective reasons as determined by the Gas Authority. Transporters must offer their pipelines' excess capacity through open bids. If a third party requiring access to transportation infrastructure doesn't reach an agreement with the transporter, the Gas Authority shall resolve the conflict.

4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

Transportadora Gas del Norte ("TGN") and *Transportadora Gas del Sur* ("TGS") own the transportation pipelines network of Argentina. These pipelines have physical interconnections at their starting zones, and also at the City of Buenos Aires' reception points. Legal aspects regarding co-operation between different gas transportation systems are regulated by the Gas Law, Hydrocarbon

Law and their regulatory Decrees, while said systems' technical aspects are regulated by resolutions issued by the Gas Authority and the SE.

4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

As stated in question 4.4 above, transporters are not obligated to expand their gas transportation pipelines network at the request of a third party. In this respect, if a transporter is not willing to expand its transportation capacity upon new customer's request, the Executive Branch may grant new Authorisations so that other entities can build the necessary pipelines to satisfy the increasing demand.

Nevertheless, under the Gas Law, Authorisations can oblige transporters to expand their systems' capacity to satisfy any increase of the demand, as long as, through the collection of tariffs, they are entitled to recuperate the investments to be made in the expansion of their pipelines.

4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Transportation rates are indicated in the "Bidding Terms and Conditions" through which Authorisations are offered. Transporters must charge the same tariffs to all customers, unless due to the location, type of services or any other reason, the Gas Authority authorises a different rate. That law also establishes that the Gas Authority shall adjust the tariffs' system every five years. Nevertheless, based on objective and justified reasons, transporters may require the Gas Authority to modify the tariffs.

In January 2002 the National Congress enacted Law No. 25,561 (the "Emergency Law") which froze and "pesified" public services tariffs -including gas transportation tariffs- converting prices into US dollars and/or other foreign currency to Argentine pesos at the exchange rate of 1 AR peso - 1 US dollar. In addition, the parties had to renegotiate the agreements to adapt them to the new economic conditions of Argentina. Nevertheless, the Executive Branch issued Decree 689/2002 which excluded export related transportation contracts from the effects of the "pesification" established by Emergency Law.

5 Transmission / Distribution

5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

Gas Law and its regulatory Decrees regulate natural gas distribution. Under that legislation, gas distribution shall be performed by private entities upon granting of the relevant Authorisations. However, if no private entity is in condition of rendering distribution services in a specific region, the National or Provincial States shall be entitled to provide those services. On the initiatives or policies of the Government to improve the distribution

network, Law No. 26,095 imposes special fees to expand that system. The Executive Branch is the competent authority to allocate the funds raised by that law.

5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

Every private entity interested in distributing gas must be awarded with an Authorisation granted by the Executive Branch. Authorisations are granted for 35 years and can be extended for ten years. Also, provincial authorisations are required to construct, operate and maintain gas distribution networks.

5.3 How is access to the natural gas distribution network organised?

Gas distributors must allow free access to their distribution systems to every third party without discriminating only in respect of such systems' excess capacity. Distributors cannot grant any advantage or preference to any third party, unless those advantages or preferences are based on objective reasons as determined by the Gas Authority. If a third party requiring access to distribution networks doesn't reach an agreement with the distributor on the terms and conditions, the Gas Authority shall resolve the conflict.

5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Authorisations can oblige distributors to expand their systems to accommodate new customers, as long as, through the tariffs structure, they are entitled to recuperate the investment made in the extension of their distribution network.

5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

Tariffs for accessing the distribution network are regulated in the "Bidding Terms and Conditions" through which Authorisations to perform gas distribution activities are offered. Distributors must charge the same tariffs to all customers, unless due to the location, type of services or any other reason, the Gas Authority authorises a different rate. The Gas Authority shall adjust the tariffs every five years. However, based on objective and justified reasons, distributors may require the Gas Authority to modify the tariffs.

5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Gas transporters and entities controlling or controlled by gas transporters cannot have control over gas distribution companies. Furthermore, consumers directly purchasing natural gas from producers are forbidden to have control over distribution companies that provide gas distribution services in the area where such consumers operates.

As gas distribution constitutes a public service, distributors cannot sell the essential assets necessary for rendering that service, nor shall encumber, lease, sublease or assign them to uses other than gas distribution services, without the prior authorisation of the Gas Authority.

6 Natural Gas Trading

- 6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.**

The Gas Law established a specific regulatory framework for the activity performed by natural gas traders. By Decree 2731/93, the Natural Gas Wholesaler Market (“*Mercado Mayorista de Gas Natural*” or “*MEG*”) was created, and the Gas Authority has issued certain resolutions that regulate the resale of natural gas. Trading can be made through the MEG in spot sales or firm offers; from producers or directly from traders. Traders must be registered with the SE and are subject to the resulting regulatory framework.

- 6.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?**

Decreets 180/04 and 181/04, together with Resolution 752/05 of the SE established the unbundling structure. Consumers are divided into different categories depending on the gas expenditure, having different rules applicable to the gas trading. In this regard, certain consumers must buy natural gas to third parties providers, different from distributors.

7 Liquefied Natural Gas

- 7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.**

Argentina does not have liquefaction facilities. Thus, there is no regulatory framework in relation to LNG facilities.

- 7.2 What Governmental authorisations are required to construct and operate LNG facilities?**

There are no regulations on the construction and operation of LNG facilities.

- 7.3 Is there any regulation of the price or terms of service in the LNG sector?**

Tariffs and terms of service in the LNG sector are not regulated yet.

8 Competition

- 8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?**

The Defence of Competition Law No. 25,156 (“*Law 25,156*”) introduced a merger control procedure and ordered the creation of a Tribunal as its enforcing authority. The Tribunal should function as an autonomous administrative court within the Ministry of the Economy. The Tribunal has not been created yet, and no specific timetable has been announced. Its functions are currently performed by the Competition Defence Commission (the “*Commission*”), the agency in charge of enforcing the previous competition law and by the

Secretary of Trade (the “*Secretary*”), to whom the Commission reports. The Secretary approves or rejects the Commission’s recommendations in both infringement investigations and merger control procedures.

On the competition of the Gas Authority to approve a merger on acquisition between gas companies see question 8.4.

- 8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?**

Article 1 of Law 25,156 prohibits any act or conduct related to the manufacturing and commercialisation of goods and services: (i) aimed at limiting, restricting, falsifying or distorting competition; (ii) aimed at hindering the access to the marketplace; or (iii) that may constitute an abuse of a dominant position in the marketplace; in a way that any of such conducts may provoke a damage to the general economic interest. Law 25,156 does not prohibit or sanction monopolies or anticompetitive conducts per se. It only sanctions those acts or conducts that may cause any of the effects listed above or that may constitute an abuse of a dominant position in the relevant market; further provided that those acts provoke a damage to the general economic interest.

- 8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?**

Investigations of anti-competitive practices are carried out by the Commission and may be initiated by (i) the Commission itself, (ii) an order issued by the Secretary to the Commission, or (iii) an action (denounce) filed by a private party with the Commission. At any time of the proceedings, the Commission may issue “cease and desist” orders whereby the infringing party is required to abstain from a conduct that is preliminarily considered as against Law 25,156. These orders may be appealed with the competent Court of Appeals. Furthermore, the Commission has wide investigative powers, including the right to: (i) request to private parties the submission of documentation and commercial books; and (ii) request to the competent courts the issuance of search warrants to access the premises of the parties being investigated.

- 8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?**

In the case of the natural gas sector, the Commission and the Gas Authority shall analyse the proposed transaction and approve or reject it. It is possible that the proposed transaction be approved by the Commission and rejected by the Gas Authority, or vice versa. Furthermore, pursuant to article 16 of Law 25,156 and as part of the merger control procedure, the Commission is obliged to request the opinion of the Gas Authority. This opinion is non-binding for the Commission.

Article 8 of Law 25,156 establishes that, unless exempted, transactions must be reported to the Commission when the cumulative business volume (turnover) of the new combined entity is greater than Pesos 200 million (approximately US\$62,500,000). To calculate the above threshold, cumulative business volume means the total gross ordinary sales of goods and services of the

new combined entity during its latest fiscal year, less any discount over sales, value added tax and any other taxes directly related to the business volume. In addition, the accumulative business volume includes the turnover in Argentina of the acquiring group of companies plus the turnover of the target company/ies, explicitly excluding the turnover of the seller.

The law indicates various transactions that are exempted from pre-merger notification even if the Pesos 200 million threshold is exceeded.

Filing is mandatory if the transaction exceeds the thresholds indicated by the Law 25,156 and provided it does not fall within one of the exemptions.

9 Foreign Investment and International Obligations

9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

No specific regulations exist prohibiting foreign investment in the natural gas sector. Foreign investors are, therefore, able to invest in the natural gas sector subject to the same regulations as national investors.

9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

Under Argentina's Constitution, international treaties have precedence over local laws and regulations. Therefore, those local laws and regulations must comply with the obligations set forth in the treaties signed by Argentina. Argentina has signed agreements with the following countries:

- a) Bolivia: Bolivia and Argentina have signed several treaties whereby Bolivia assumes the obligation to supply natural gas to Argentina under the terms and conditions set forth in those treaties.
- b) Chile: Pursuant to different protocols of the Economic Integration Agreement No. 16 ("*Acuerdo de Complementación Económica N° 16*") executed between Argentina and Chile, the signing parties agreed to maintain a legal framework that encourages the free commercialisation, transportation, importation and exportation of natural gas between the two parties. Due to the energy crisis affecting Argentina during the last few years, Argentina has defaulted on some of its obligations under the protocols, restricting the free flow of gas to Chile.

10 Dispute Resolution

10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

Any controversy or dispute between producers, transporters,

distributors, consumers or any third interested party (natural or artificial persons), arising from the rendering of a service under Gas Law, must be prior and compulsory submitted to the jurisdiction of the Gas Authority. The final jurisdictional decision of the Gas Authority can be appealed before the Appellate Court on Administrative Federal Matters of the City of Buenos Aires within 15 days as from the service of process of the decision. In addition, any administrative decision of the Gas Authority can be challenged through an administrative procedure (Administrative Proceedings Law) and a judicial remedy is available directly before the Appellate Court on Administrative Federal Matters of the City of Buenos Aires.

Finally, administrative penalties imposed by the Gas Authority can also be directly appealed by a direct appeal before the Appellate Court on Administrative Federal Matters of the City of Buenos Aires within 30 days as from the penalty's notification. In general, appeals do not have a suspensive effect; however, for penalties the appeal might have a suspensive effect provided that the appellant posts a bond to the order of Appellate Court for the amount of the appealed penalty.

10.2 Is Argentina a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Argentina is a signatory party and has duly ratified into domestic legislation, both such Conventions. The Convention on the Recognition and Enforcement of Foreign International Awards (the "New York Convention") has been ratified by Law No. 23,619. Argentina adhered to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID") by Law No. 24,353.

10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Argentina signed all the conventions as to facilitate foreign investors to enforce awards against the government. However, from a practical point of view, Argentina is challenging adverse awards and none of such awards have been enforced. Finally, in the renegotiation of the utility agreements (including those of the gas distribution company) the government request as a condition for that renegotiation, the waiver of the utility companies to its rights under the bilateral investment treaties and ICSID.

As a result of being a signatory party of the ICSID Convention, Argentina entered into several Bilateral Investment Treaties ("*BITs*") since 1990. Based on these BITs, and mainly after the country's default of 2002, Argentina was named respondent in several ICSID arbitration cases. To this date, only a few awards were issued on those arbitration cases (i.e. "*CMS Gas Transmission Company v. Argentine Republic*. ICSID Case No. ARB/01/81-; "*Azurix Corp v. Argentine Republic* -ICSID Case No. ARB/01/12-; "*Sempra Energy International v. Argentine Republic* -ICSID Case No. ARB/02/16-, among others). Specifically, both "*CMS*" and "*Sempra*" cases involved litigation regarding breaches in the Gas sector. "*CMS*" was an investor in TGN and "*Sempra*" was an investor in Sodigas Pampeana and Sodigas Sur. Both the "*CMS*" and "*Sempra*" awards admitted the plaintiff's complaint that Argentina breached the "fair and equitable treatment" clauses under

the BITs. Consequently, the aforesaid plaintiffs were awarded, respectively, with US\$133,200,000 and US\$128,250,462.

After the award in “CMS” was released -May 12, 2005- Argentina filed two motions against ICSID annulment panels, seeking to: (i) obtain a declaration that the award shall be declared null; and (ii) stay any award’s execution until the aforesaid annulment motion was decided. After hearing Argentina’s commitment that it will comply with the annulment decision, the ICSID annulment panel granted Argentina’s motion to stay the award’s execution. However, on August 21, 2007 the annulment panel in “CMS” rejected Argentina’s motion in that regard, and directed Argentina to comply with the purchase of CMS’s shares in TGN, within 228 days as from September 25, 2007. However, newspaper information reported that such purchase did not occur to this date.

Finally, the “Sempra” award was issued in September 9, 2007 but final resolution of this claim is still pending.

10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

As anticipated above in question 10.3, such disputes were based on BITs that contained the investor’s choice to resort to ICSID arbitration. This is why domestic courts did not get the chance to rule on these matters.

11 Updates

11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Argentina.

On March 6, 2008 the SE enacted Resolution No. 24/2008 that created the gas production incentive programme called “Gas Plus”. Gas Plus was created to incentive gas reserves exploration and gas production which during the last years decreased as a consequence of the freezing of gas tariffs established by Emergency Law.

Gas produced under Gas Plus is not subject to gas tariffs’ regulations set forth in the Natural Gas Producers Agreement 2007-2011.

In late 2008, the National government announced investments up to US\$1,500,000 (United States Dollars One Million Five Hundred Thousand) to be made by private parties to develop gas exploration and exploitation activities under Gas Plus.

In addition to Gas Plus, the National government is analysing an increase of 10 to 30 per cent of gas tariffs for residential consumers.

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Adolfo Durañona holds a JD from the School of Law of the University of Buenos Aires and an LL.M. from the Southern Methodist University, Dallas, Texas (1988).

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Papers on "Extended Liability for Environmental Damages (Mining Code)", Oil and Gas, Law and Taxation Review, Sweet & Maxwell, (July, 1996); "A New Perspective for the Argentine Mining Industry" Oil and Gas, Law and Taxation Review, Sweet & Maxwell, (September, 1996); "Bilateral Investment Treaties" Rocky Mountain Mineral Law Foundation, Lima Perú, 2005.

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Founded in 1978, the office today ranks as one of Buenos Aires' largest and finest law firms. It is leader in representing clients on domestic and international natural resources (mining and oil & gas), tax, litigation, corporate, real estate, securities transactions, banking and financing, labour and other areas of law.

With its international network, it provides the full range of corporate and commercial legal services, and advises local and international companies in sophisticated transactions as well as in matters related to its local operation. In the case of mining and oil & gas, the office has a highly specialised team that assist the clients in requesting and auditing mining and oil & gas rights, negotiating the specific agreements, reviewing the applicable tax and environmental legislation on Federal and Provincial level, and in general, helping the client to accomplish its project.

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