

**Baker  
McKenzie.**

**Doing Business  
in Argentina**

**2018**



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## **A. Foreign Investment Law**

Foreign investors enjoy the same rights and have the same duties as domestic investors when investing in financial or productive activities.

Generally, Argentine Law does not set any restrictions or prohibitions on foreign investments. Where there are no restrictions, no prior government approval is required beyond that applicable to any domestic or foreign investor in each activity. Certain industries (e.g., banking, media) do require reciprocity as a condition for foreigners to invest. In certain other industries (publishing, internet and related) foreign companies cannot own more than 30% of the stock of a company. Rural land can be owned by foreigners although some restrictions and limitations apply for certain areas. Foreigners can own land in bordering zones subject to prior approval.

Investments may be made in the form of: (i) foreign currency; (ii) capital assets; (iii) profits from other investments; (iv) repatriable capital resulting from other investments made in the country; (v) capitalization of foreign credits; (vi) intangible assets; and (vii) other forms acceptable to the competent authorities.

## **B. Transfer of Technology**

### **1. Scope of the Transfer of Technology Law**

The Transfer of Technology Law governs agreements that provide for the transfer, assignment or licensing of technology or trademarks by foreign-domiciled persons to Argentine-domiciled persons. Executive Order No. 580/81 defines “Technology” as patents, utility models and designs, and any

technical knowledge applicable to the manufacture of a product or rendering of a service. The following could not be construed as technology:

- a. Acquisition of products
- b. Technical or consulting services, know-how licenses, including those pertaining to information, knowledge or application methods in financial, commercial, legal, marketing, or sales areas and, in general, any other delivery or rendering of service that does not evidence clearly and specifically the effective incorporation of technical knowledge directly applied to the productive activity of the local contractor
- c. License to use software or software updates
- d. Services involving repairs, supervision of repairs, maintenance, and setup of plants or machineries, excluding the local contractor's personnel training
- e. In general, all activities that directly represent the hiring of tasks related to the current operation of the local contractor.

## **2. Agreements Between Related Parties**

License agreements executed by a domestic licensee and a related foreign licensor need not be approved by, and registered with, the *Instituto Nacional de la Propiedad Industrial* (National Institute of Industrial Property) (the "INPI"). However, failure to register them has adverse tax consequences (see chapter 4).

These agreements must be entered into "regular or usual market practices between unrelated parties" and the consideration must be supported by a transfer pricing study.

### **3. Agreements Between Unrelated Parties**

Agreements between unrelated parties are registered with the INPI only for statistical and tax purposes. No specific conditions are established for them.

### **4. Tax Treatment of Payments**

Generally speaking, payments to foreign beneficiaries arising from transfer of technology agreements are considered as Argentine-source income and thus subject to Argentine taxation. The applicable rates may vary, depending on whether the agreement is registered with the INPI and on some other reasons (e.g., the way in which the service is being rendered or distributed).

The lack of registration of an agreement between related companies or unrelated parties with the INPI does not adversely affect its validity. However, if the agreement is not registered: (i) the licensee may not deduct the amount paid to the licensor for income tax purposes, and (ii) all payments made to the licensor deriving from a non-registered agreement are subject to a 31.5% income tax withholding. Conversely, registered agreements are subject to a lower rate, ranging from 21% to 28%, according to the kind of technology being transferred and the method used for estimating the remuneration or service. These rates may be substantially reduced if an agreement to avoid double taxation is applicable. Argentina has entered into these agreements with several countries (please see Section G, 5, (e), below).

## **C. Intellectual Property**

In Argentina, Intellectual Property rights are protected by Section 17 of the National Constitution, which provides that "All authors or inventors are the exclusive owners of their

works, inventions or discoveries for the period of time established by law".

Argentina is also a party to:

- the Paris Convention (Lisbon Agreement, 1958);
- the GATT/TRIPs Agreement;
- Berne Convention (Paris, 1971);
- International Convention for the Protection of new varieties of plants (UPOV) (Geneva, 1978)

## **1. Patents and Utility Models**

Patents and Utility Models are governed by Law 24,481, as amended, and Decree No. 260 of March 20, 1996, and Decree No. 27/2018 of January 11, 2018

The salient points of the legislation are as follows:

- a. Any individual or legal entity, either national or foreign, is entitled to obtain patent and/or utility model certificates.
- b. "Invention" is defined as any patentable device or process created by an independent effort, capable of transforming matter or energy for the benefit of man.
- c. Inventions of products and processes are patentable if they are novel, involve an inventive activity and are capable of industrial application. While absolute novelty is required, the disclosure of the invention at an exhibition or in a publication or other means of communication within one year prior to the patent

application date or priority date shall not affect its novelty.

- d. Patents are granted for a term of 20 years from the application filing date.
- e. The law grants a 10-year protection term for Utility Models from the application filing date, and such term may not be extended.
- f. Patents and Utility Models are subject to annuities.
- g. Pharmaceutical products are subject of protection effective as from October 2000. However, the Argentine Patent Office, with the Ministries of Industry and of Health issued a joint resolution (118/2012, 546/2012, 107/2012) with new guidelines for the examination of chemical-pharmaceuticals patent applications, which severely restricts the patentability of inventions in the pharmaceutical field.
- h. Inventions made by an employee in the course of his or her employment contract shall belong to the employer, provided the purpose of such contract or relationship involves inventive activities, either partially or totally.
- i. After 3 or 4 years, depending on the circumstances, any person is entitled to request from INPI an authorization to use the invention without the patentee's authorization (compulsory license) if it has never been used or if its use has been interrupted for more than one year, except in case of force majeure or lack of effective preliminary steps for using the patented invention.

- j. The law imposes civil and criminal penalties, such as fines and imprisonment, on anyone who infringes a patent or a patentee's rights, as well as remedies to stop the infringement, such as seizure, inventory and attachment of the forged objects.
- k. Regarding software patents, the Argentine Patent Office issued Resolution No. 318 of December 7, 2012, introducing guidelines on the patentability of computer programs.
- l. Preliminary Injunctions. As established by Art. 50 of the GATT/TRIPS Agreement, judicial authorities shall have the authority to order prompt and effective provisional measures a) to prevent an infringement of any IP right; and b) to preserve evidence in regard to the alleged infringement

The preliminary injunction under section 83 of our Patent Law as amended by Law 25.859 includes the seizure of one or more samples of the objects under infringement, or the description of the incriminated process, or the inventory or preliminary attachment of the forged objects and of the machines specially destined to the manufacturing of the products or the execution of the incriminated process.

## **2. Industrial Models and Designs**

Industrial Models and Designs are ruled by Law No. 16,478 and Decree 27/2018, and refer to the shapes or configuration of elements given or applied to an industrial product that is substantially decorative or ornamental.

The protection term is five years, beginning from the date of deposit, which may be extended to two consecutive periods at the owner's request.

The law provides for the renewal and transfer of industrial designs, cancellation actions, and civil and criminal actions arising from infringement of owner's rights.

### **3. Trademarks**

Law No. 22,362, amended by Decree No. 27/2018, protects both trademarks and service marks.

Ownership of a trademark and the right to its exclusive use are acquired by registration. A legitimate interest is only required to become the owner of a trademark and to exercise the right to use it.

Before registration, a trademark is published for purposes of opposition by third parties and is subject to an initial examination by the Trademark Office examiners.

The protection term of a registered trademark is 10 years from the date of registration. It may be renewed indefinitely for periods of 10 years, provided the trademark is used within the five years preceding each expiration date.

Prominent trademarks have been granted special protection by law and court decisions. A trademark is null and void when it is registered by anyone who, when applying for registration, knew or should have known that it belonged to a third party.

Trademark infringement is punishable with a fine or imprisonment.

The Law also prescribes provisional remedies or preliminary injunctions to investigate the infringement of a trademark and identify its authors.

## 4. Author's Right (Copyright)

Law No. 11,723, as amended, protects all scientific, literary, artistic or didactic works, expressly including computer software (source and object), data compilations and other materials irrespective of their means of reproduction.

Foreign works (works first published in foreign countries, regardless of the nationality of the author), when they are made in countries that recognize copyright, are protected.

As a general rule, copyright is for a term consisting of the life of the author, and 70 years from the first day of January subsequent to his or her death. Copyrights to photographic work last 20 years.

All Argentine works must be registered with the *Dirección Nacional del Derecho de Autor* (National Copyright Office) the secure entitlement

Foreign works need not be registered in the Argentine Republic. However, to enjoy protection of Argentine law, they must comply with the formalities set forth in the international treaty to which both the Argentine Republic and the country of origin of the work are parties (i.e., if the Berne Convention is applicable, no formalities are required; if the Universal Convention is applicable, formalities have to be fulfilled if the work includes the © with the name of the copyright owner and the year of first publication). If no treaty is applicable, authors have to prove that they have complied with the formalities of the country of publication or that the said country does not require any formality.

Law No. 11,723 also provides for injunctions and criminal sanctions for copyright infringement.

## **5. Software**

Law No. 11,723, as amended by law 25,036 of November 19, 1998, protects, among other works, computer software (source and object), irrespective of their means of reproduction.

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

## **6. Industrial and Trade Secrets**

Law No. 24,766 of December 20, 1996, establishes that, under certain conditions, any person who legitimately owns some information may bring legal action to prevent the disclosure of such information by any third party or to prevent it from being acquired and/or used by any third party, and to claim compensation for the damages caused.

Trade secrets are also protected by the provisions of the GATT/TRIPS Agreement, as approved by Argentine law and by the Criminal Code.

## **D. Exchange Controls**

Concomitant with the new administration's decision to let the exchange rate float, the Argentine Central Bank has amended the exchange control regulatory framework abrogating most restrictions having an impact in the offering as well as in the demand side of the local foreign exchange market. Accordingly no prior authorization is requested for accessing the foreign exchange market and transferring funds abroad and foreign exchange transactions are reported to the Central Bank for statistical purposes. Lastly the obligation to repatriate export proceeds was abrogated.

## E. Foreign Trade

### 1. Introduction

The Argentine customs legislation is basically composed of the Customs Code – Law No. 22,415 (“Customs Code”), its regulatory Executive Order No. 1001/82, and the Treaty of Asuncion, or the **Mercosur** Treaty, as well as its protocols. Argentina, Brazil, Uruguay and Paraguay are parties to this treaty, which sets forth the basis for a common market.<sup>1</sup>

The key issue when importing goods into Argentina is the tariff classification of the underlying goods. The tariff classification will determine not only the applicable duty rate but also, among other things, statistics fee, value-added tax rate, prohibitions, certain exchange control rules, terms of payment, technical requirements, sanitary requirements, rules of origin and labeling.

Mercosur countries have established a common external tariff for most of the tariff classification items of Mercosur Common Nomenclature (“NCM”). However, each of the parties has a significant number of exceptions to such common external tariff.

Argentina adopted the NCM, which is based on the Harmonized Commodity Description and Coding System (the “Harmonized System,” or “H.S.”) developed by the World

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<sup>1</sup> In the Argentine legal system, treaties entered into with other countries have a higher rank than domestic laws and may not be overridden or repealed by them. Venezuela is also a party but it has been suspended due to lack of adoption of Mercosur’s regulations.

Customs Organization (formerly Customs Co-operation Council).

Under the NCM, an eight-digit tariff number identifies goods imported into Argentina. The first six digits of the classification number correspond to the international portion of the NCM. The seventh and eighth digits, which make up the tariff item, are unique to Mercosur. The duty rate applicable to imported or exported goods will be determined by reference to the tariff item, that is, the full eight digits. Argentina has three additional digits for domestic purposes. They determine the applicability of certain requirements and/or restrictions and, in some cases, exceptions to the common external tariff.

Import and export duties are generally *ad valorem*, that is, based on a percentage of the value of the goods. Mercosur has adopted *ad valorem* rates ranging from 0 up to 35%. Argentina has approved the GATT valuation call.

## **2. Importers and Exporters' Registration Before the Customs Service**

Individuals or corporations wishing to import or export goods into or from Argentina must generally be registered in the Importers and Exporters' Registry before the Customs Service. A number of exceptions apply (e.g., luggage, onboard supplies)

If a person wishes to make sporadic foreign trade operations, it may request authorization for each of these operations from the Customs Service. In this case, it will not be necessary to comply with the requirement of registering before the Customs Service.

### **3. Definitive Imports (Clearance for home use)**

Definitive importation is the most common type of importation.

In general, import duties vary from 0 to 35%, according to the tariff classification of the goods in the NCM.

The customs value (taxable base) for the calculation of import duties is the transaction value (on a CIF basis).

In addition to the import duties, an importer shall pay the following taxes:

- (i) **Statistics Fee:** This is levied on the transaction value (on a CIF basis) of the imported goods. The tax rate currently in force is 0.5%. However, the statistics fee is subject to maximum amounts, depending on the value of the imported goods (e.g., where the value of imported goods exceeds US\$100,001, the applicable statistics fee is US\$500).
- (ii) **Value-added tax (VAT):** 21% of the aggregate of the CIF value of the goods, the import duties and the statistics fee. Certain capital goods are subject to a reduced 10.5% VAT rate.
- (iii) **VAT additional payment:** 10 % of the aggregate of the CIF value of the goods, the import duties and the statistics fee. This perception does not apply if the importer is the final consumer of the goods. This perception can be set off against the importer's annual tax report.
- (iv) **Income tax advance payment:** If the importer is not the final user of the imported goods, a perception of

income tax will have to be paid at a rate of 6 %. This advance of income tax shall be computed for the importer's annual income tax.

- (v) 2.5 % advance gross receipts tax. This is a local tax which rate may vary depending on the jurisdiction.

Both VAT additional payment and income tax advance payment do not apply if the imported goods are fixed assets of the importer.

#### **4. New import Monitoring System**

By means of General Resolution 3823 -published in the Official Gazette on December 22, 2015- the Federal Tax Administration abrogated the import licensing system known as Import Monitoring System (*Sistema Integral de Monitoreo de Importaciones*, "SIMI").

SIMI applies to all final imports into Argentina. According to such regime, any importer must –prior to importation- submit the information that will be detailed in the site "*Sistema Integral de Monitoreo de Importaciones*" of Federal Tax Administration's webpage by means of the Argentine fiscal authority electronic system.

Once the information is submitted, all governmental agencies that have signed up (or will sign up) to the Single Foreign Trade Window ("VUCE" according to its Spanish acronym) shall have ten (10) days to make any kind of observation to the filing made by the importer. Such observation shall be communicated by the Federal Tax Administration to the importer who will then have to get in touch with the agency making such observation.

According to General Resolution 3599 –which establishes the VUCE-, the agencies that have signed up to it, among others,

are: the food and drug administration (“ANMAT”), Sedronar, Secretary of Commerce, Central Bank and private trade associations (that have to right to participate as observers during the physical inspection of the goods at the time of importation) and even more agencies will be included in the short run.

At the time of filing the import declaration, the importer must include the identification number issued by the SIMI. The IT system of customs will then perform the consistency controls between the information filed with the SIMI and that filed at the time of importation. The declarations filed with the SIMI will have a 180 day validity, as from the date of approval.

The Ministry of Production also issued Resolution 523/2017 establishing a new system of automatic and non automatic import licenses applicable to all final imports into Argentina.

Automatic Import Licenses (“ALs”) apply to all the goods included in the Mercosur Tariff Schedule (“NCM”). Regarding non automatic licenses (“NALs”), the same cover around one thousand tariff item numbers of the NCM (out of a total of 19,000 approximately) listed in Schedules II through XVII of Resolution 5. To obtain a NAL, the importer must first file with the SIMI the information required for the ALs and then, within ten working days of such filing, it must file the specific information required for each type of goods and also indicated in such Schedules. The information required varies with the type of products. In general, it is related with certification requirements, compliance with technical norms and product specific information, among others. The Secretary of Commerce has the right to request further information, if needed.

Both ALs and NALs shall have a validity of ninety days as from their approval. Goods imported under the sample, donations and diplomatic franchises regime, as well as those

imported under the courier regime –provided the importer is the final user of the goods- are exempted from the licensing requirements.

## **5. Temporary Imports<sup>2</sup>**

There are basically two types of temporary importation procedures:

- (i) Goods which are to be exported in the same condition as they enter the country. Such goods must be re-exported in certain periods, depending on the nature of the goods.
- (ii) Goods which will undergo a process of transformation, manufacturing or repair and will be re-exported. In general, such goods must be re-exported within a two-year term.

No import duties apply to the importation of goods under these regimes, except certain service fees.

In order to import goods under these regimes, a guarantee must be provided to the Customs Service to ensure the payment of duties and/or penalties that may apply.

Under the temporary import regime, the importer may not sell, lease, lend, or otherwise transfer the tenancy of the imported good, unless expressly authorized by the Customs Service.

However, under the procedure mentioned in (ii) above, when part of the production process must be made by a third party,

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<sup>2</sup> There are other Customs temporary regimes, such as temporary export, Customs warehousing procedure, and in-transit goods.

the importer may transfer the temporary imported goods subject to prior approval from the Customs Service. In this case, the original importer will remain liable before customs for compliance with all the obligations imposed as a condition for granting this regime.

In order to import the goods under the definitive import procedure, the importer shall request authorization from the Customs Service (subject to payment of applicable import duties). The Customs Service is entitled to place the goods under the definitive import procedure unless a prohibition applies and/or the purpose of the temporary import procedure is affected by such a decision. Under the procedure mentioned in (ii) above, besides the applicable import duties, definitive importation of temporary imported goods may be subject to additional duties.

Extension of the terms originally granted may be authorized as long as certain conditions are met.

If the temporary import status expires and the goods are not yet exported or no request for authorization from customs to place the goods under the definitive import procedure has yet been made, the importer will be liable for payment of the import duties and applicable taxes plus penalties.

Export of goods that were temporarily imported under the procedure mentioned in (i) above is not subject to export duties, unless such goods were improved in any manner, in which case export duty would apply only to the added value.

Export of goods that were temporarily imported under the procedure mentioned in (ii) above is subject to export duties and the payment of export benefits.

## **6. Dumping**

The antidumping process is regulated by Law No. 24,425 and its Regulatory Executive Order No. 1,088/01. Antidumping provisions are consistent with the guidelines set forth by GATT's Uruguay Round.

## **7. Exports**

Most of the export duties have been done away with during December 2015 and 2016.

The exportation of goods is exempt from VAT and gross receipts tax.

Argentine exporters are subject to Exchange Control Regulations and to the Criminal Exchange Control Regime. Exporters must bring foreign currency proceeds from exports into Argentina in the mandatory terms prescribed by the Central Bank. This obligation, however, has been relaxed during 2016 by means of an extension of the due dates for repatriations.

There are some export promotion programs like drawbacks, export refunds and export reimbursements.

## **8. Mercosur**

The Mercosur Treaty took effect on January 1, 1995. Argentina, Brazil, Uruguay and Paraguay are parties to this treaty, which sets forth the basis for a common market. Venezuela has been suspended for failure to adopt Mercosur's regulations. At this stage, Mercosur is an imperfect customs union. Chile and Bolivia have already signed trade agreements with Mercosur, which have eliminated customs duties on most tariff classification items.

The trade of goods originating in and proceeding from Mercosur countries, being part of a customs union, is not subject to import duties and is exempt from the statistics fee, except in specific cases. Likewise, Mercosur countries have established a common external tariff (“CET”) for most tariff classification items of the NCM. However, each of the parties has a significant number of exceptions to such CET. Mercosur countries are now negotiating a schedule for their domestic tariffs to converge definitively to the CET.

In order to qualify as Mercosur goods, the products must meet the Mercosur rules of origin set forth in the Mercosur Origin Regime.

The goods will be considered originating in a Mercosur country if:

- a. The products are totally manufactured in a Mercosur country. This means they are produced with the exclusive use of materials originating in Mercosur countries.
- b. The products are manufactured with materials of third countries but are “transformed” in a Mercosur country, and the “transformation” allows that the product be classified under a tariff number of the NCM (four digits) that is different from the tariff number of the original materials.
- c. The products comply with the 60% value-added rule. In other words, if the requirement indicated in (b) above is not satisfied because the transformation process does not imply a shift in tariff number, to qualify as originating in Mercosur, it will suffice that the CIF port of destiny value or the CIF maritime port value of the third country components is equal to or less than 40% of the FOB value of the product. To

determine the CIF value of third country materials for countries without maritime border, the first maritime or river port located in the territory of the other member countries of Mercosur through which the product entered into Mercosur shall be considered the port of destination.

- d. The products result from a process consisting only in assembly in a Mercosur country, using non-Mercosur materials, where the CIF port of destiny value or the CIF maritime port value of the third country components is equal to or less than 40% of the FOB value of the product.
- e. Capital assets comply with the 60% value-added rule.
- f. The products are subject to specific origin requirements. These requirements will prevail over the general requirements mentioned in (a) to (e) above and shall not be required for products totally manufactured in a Mercosur country (i.e., where such products are made with the exclusive use of materials originating in Mercosur countries).

Products made exclusively from non-Mercosur materials and resulting from a process carried out in a Mercosur country consisting only in assembly, classification, division, labeling, or any other processes which do not change the characteristics of the product, shall not qualify as originating in a Mercosur country.

## **F. Entities**

Argentine General Companies Law No. 19,550 (“Law No. 19,550”) [Ley General de Sociedades] recognizes different types of legal entities (“personas jurídicas”). The usual types of legal entities are corporations (“sociedad anónima”) and

limited liability companies (“sociedad de responsabilidad limitada”).

Foreign legal entities are entitled to conduct business in Argentina by either registering an Argentine branch (please see comments under point 1 below) or incorporating a Subsidiary - usually, a corporation or a limited liability company (please see comments under points 2 and 3 below).

Foreign legal entities that are shareholders of Argentine corporations or quotaholders of Argentine limited liability companies shall be registered with the Public Registry (“Registro Público” - “PR”).

## **1. Argentine Branch of Foreign Legal Entity**

To establish a branch, a foreign legal entity must appoint an attorney-in-fact, who shall apply to the PR for registration purposes. The application contains the following documents:

- a. Certified copy of the articles of incorporation of the foreign legal entity as well as any by-laws amendments duly registered with commercial authorities of place of incorporation.
- b. Certificate of good standing of the foreign legal entity which attests the registration of the company dated no more than 6 months of the filing to be carried out, issued by authorized registrar.
- c. Certified copy of the bylaws of the foreign legal entity.
- d. Certified documentation evidencing that the foreign legal entity meets at least one of the following conditions: (i) it has one or more branches or

permanent representations registered or incorporated outside the Argentine Republic; (ii) it holds equity holdings or interests in companies incorporated or registered outside the Argentine Republic that are regarded as non-current assets, as defined by the generally accepted accounting principles; or (iii) it owns fixed assets in its place of incorporation or registration, the existence and value of which shall be evidenced pursuant to generally accepted accounting principles.

- e. Certificate disclosing shareholders of the foreign entity and their percentages of ownership and votes held.
- f. Certified abstract of the minutes of the board of directors' meeting (or similar) approving the establishment of the branch containing the following: (i) resolution to register as a branch with the PRC; (ii) date of fiscal year end; (iii) evidencing that the foreign legal entity does not face liquidation nor it undergoes legal procedure imposing restrictions on assets and/or activities; (iv) the legal domicile of the branch within the City of Buenos Aires; (v) capital stock if any; (vi) appointment of the legal representative (individual not an entity) as well as including postal address and an email address of the parent company for all notices regarding the legal representative performance and (vii) evidencing that the foreign legal entity is permitted to conduct business in the place where it was incorporated or registered.
- g. Power of attorney authorizing the attorney-in-fact to register the branch.

- h. Broad power of attorney authorizing an individual (i.e., the local manager) to manage the branch.

Most of the documents specified above must be notarized and “legalized” either through the appropriate Argentine consulate and the Argentine Ministry of Foreign Affairs or through an *Apostille*, a procedure contemplated by The Hague Convention of 1961. Once in the Argentine Republic, such documents must be translated into Spanish by a certified translator whose signature must be legalized by the Argentine Association of Certified Translators (“Colegio de Traductores Públicos”).

It is convenient to review from time to time the resolutions enacted by the PR in order to see if there changes to the documents required and/or new requests of information/documents.

A foreign legal entity does not need to assign corporate capital to its branch unless the branch is engaged in certain specific activities (e.g., insurance).

## **2. Argentine vehicles**

### **a) Corporations**

Usually, corporations ("*sociedad anónima*") are owned by two or more shareholders. Nevertheless, with certain restriction, the applicable regulation allows the incorporation of a corporation by a sole shareholder (either local or foreigner).

In principle, the shareholders are not liable for corporate debts and obligations beyond the total amount of their capital subscriptions; nevertheless, there may be exceptions to this rule.

Currently, a corporation must have a capital of at least AR\$\$ 100,000. Nevertheless, according to the PR, the corporate

capital must be proportional to the corporate purpose. The criterion to determine the amount of corporate capital is on a case by case basis.

Capital must be divided into nominative shares of equal par value. Shares may be common or preferred. All shares must have been subscribed for prior to formal incorporation of the corporation. Upon incorporation, the shareholders shall have made all of their paid-in contributions in kind and at least 25% of their contributions in cash. The remaining cash contributions must be paid within two years counted as from the incorporation date. In the case of corporations incorporated by a sole shareholder, the capital stock is to be totally paid-in upon its incorporation.

The Board of Directors is in charge of the management of the corporation. It makes decisions and carries them out. The board of directors may consist of one or more directors. Directors can be either Argentine individuals or foreigners. In all cases, the absolute majority of the directors must actually be domiciled in Argentina. All directors, whether or not domiciled in Argentina, must establish a “special domicile” within the Argentina.

The by-laws of the corporation may provide for a statutory auditor (“sindicó”), who must be a lawyer or an accountant domiciled in the Argentine Republic. Such a statutory auditor is mandatory in certain cases. b) Argentine Limited Liability Companies

In the case of the limited liability company (“*sociedad de responsabilidad limitada*”) the shareholders are named quotaholders.

As in the case of a corporation, liability of the partners or quotaholders (capital stock in limited liability companies is divided into “quotas”) is limited to the amount of their capital

contributions in the company; nevertheless, there may be exceptions to this rule.

There are no capital requirements for a limited liability company but the capital must be proportional to the corporate purpose. The capital must be divided into quotas of equal par value.

A limited liability company is managed by one or more managers who may be partners or not. Managers have the same rights and duties as the directors of a corporation. They may be appointed for a fixed or indefinite term. If more than one manager is appointed, the by-laws must provide the manner in which they shall exercise their powers.

Managers are empowered to accomplish the corporate purpose provided in the by-laws. The absolute majority of the managers must actually reside in Argentina.

The by-laws of the limited liability company may provide for a statutory auditor (“*síndico*”), who must be a lawyer or an accountant domiciled in the Argentine Republic. Such a statutory auditor is mandatory in certain cases.

## b) Simplified Stock Corporations

Simplified stock corporations (“*sociedades por acciones simplificadas*”) were recently created by Law No. 27,349 and complemented by Law No. 19,550. According to applicable regulations, simplified stock corporations can have one or more local or foreign shareholder/s.

As in the case of corporations and limited liabilities companies, liability of the shareholders is limited to the amount of their capital subscribed in the simplified stock corporation.

The corporate capital must be, at least, equivalent to two minimum salaries as determined by the applicable authority (currently each salary amounts to ARS\$ 8,860 -approx. USD 550 at the current exchange rate). No additional capital may be required, regardless of the fact that such amount is reasonable to carry out the corporate purpose.

The management of a simplified stock corporation is vested to one or more members, who can be shareholders or not (an equal or lower number of alternate managers must be appointed, if the company does not have regular syndics). They may be appointed for a fixed or indefinite term. If more than one manager is appointed, the by-laws must provide the manner in which they shall exercise their powers (i.e., individually, alternatively, indistinctly or as a body). Managers can be either Argentine individuals or foreigners, and at least one member of the Management must be actually domiciled in Argentina. All managers, whether or not domiciled in Argentina, must establish a “special domicile” within the Argentine Republic.

Simplified stock corporations are not obliged to appoint statutory syndics, regardless the amount of corporate capital.

Also, Law No. 27,349 sets forth that the individuals that are neither managers nor legal representatives of a simplified stock corporation will have the same liability as the managers, and they will be further liable for those acts in which they are not involved if they perform management activities on a regular basis.

### **3. Registration with PRC of a Foreign Legal Entity**

Foreign legal entities can be shareholders of Argentine corporations and quotaholders of Argentine limited liability companies. Applicable regulation require that the same be registered with the PR.

Basically, foreign legal entities applying for registration with the PR shall comply with the following two requirements: (a) to perform significant economic business activity outside Argentina, and (b) not to be restricted to develop its businesses in its place of registration.

**Significant Economic Business Activity.** The PR sets forth that significant economic business activity outside Argentina is evidenced by means of one of the following conditions:

- (i) the foreign legal entity has one or more branches or permanent representations registered or incorporated outside Argentina. Compliance with this condition must be evidenced with a certificate issued by the appropriate governmental authority at the place of incorporation or registration of the foreign legal entity's branches or permanent representations (i.e.: Secretary of State or the appropriate authority of the place of incorporation or registration of foreign legal entity's branches or permanent representations).
- (ii) the foreign legal entity owns (a) equity participations or interests in companies incorporated outside Argentina that are regarded as non-current assets (as defined by generally accepted accounting principles), and/or (b) fixed assets outside Argentina (property used for production of goods and services, such as plant and machinery, buildings, land, and mineral resources); evidenced by filing either its last financial

statements or a certification arising from entries made on the corresponding accounting books. The documents used to evidence this condition must also inform the value of the shares or interests of the foreign legal entity in those companies registered outside Argentina and their percentage in their capital stock. This certificate can be issued by either a certified public accountant or a duly authorized officer of the foreign company.

Restriction to develop businesses in its place of incorporation. The PR sets forth that foreign legal entities restricted from developing their businesses activities in their places of incorporation (off-shore companies) shall not achieve registration unless such foreign legal entities fall within the concept of “vehicle of investment”.

A foreign company will be considered a “vehicle of investment” when it is controlled by another company which is able to conduct significant economic business activity outside Argentine, as per the requirements described above.

Despite the compliance with the two requirements mentioned above, the PR will require additional documents to foreign companies registered in certain jurisdictions.

## **G. Income Tax**

### **1. Source of Income Rules**

The Income Tax Law (Law No. 20,628/73, as amended) and its regulations apply to all global-source income of individuals living in the Argentine Republic and Argentine corporations, branches or other permanent establishments of foreign entities located in the Argentine Republic, and to all local-source income of foreign beneficiaries. Broadly defined, local-source income is income derived from assets situated in the Argentine

Republic or activities carried out in the Argentine Republic. Individuals and corporations subject to tax on global-source income are entitled to credit for similar taxes paid abroad, the amount of which may not exceed the increase in Argentine income tax payable as a consequence of including the foreign-source income in the taxable base.

## **2. Exports – Imports**

Profits arising from the export of goods produced, manufactured or extracted on Argentina are totally Argentine source income.

Profits obtained by foreign individuals and corporations from the export of goods into the Argentine Republic are foreign-source income of the foreign exporter.

Where these operations are entered into by related companies, the arm's length principle shall apply, i.e., normal practices of the market between independent entities, as evidenced by a transfer pricing study that must be filed annually.<sup>3</sup> Import and/or export operations entered into by related parties shall be adjusted by the Federal Tax Authority where the prices and conditions of such transactions are not adjusted to normal practices of the market between independent entities.

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<sup>3</sup> The transfer pricing provisions of the Argentine Income Tax Law generally follows the OECD guidelines for Multinational Enterprises and Tax Administrations. Transfer pricing rules are applicable not only in the case of companies which are related by means of capital interest but also when any other form of control not necessarily involving capital, such as an operative, contractual or management control, exists.

If these operations are entered into with companies having domicile in, or constituted in accordance with, or located in low tax jurisdictions, they will not be considered entered into market conditions; thus, transfer pricing rules will apply.

Where international prices – of public and notorious knowledge – exist for imported and/or exported goods, which may be established through transparent markets, commercial exchange markets and the like, said prices, in principle, shall be used in determining the net income of Argentine source.

Where import and/or export operations made between independent parties exceed the annual amount of AR\$1,000,000, the taxpayer (exporter or importer) shall submit the necessary information to the Federal Tax Authority in order to demonstrate that the declared prices are adjusted to market prices, including assignment of costs, profit margins and any other relevant information that the Federal Tax Authority may consider necessary for the audit of such operations. Import and/or export operations of goods considered as commodities carried out with unrelated parties must be also informed to the Federal Tax Authority, even if the annual amount of such transactions does not exceed the annual amount of AR\$1,000,000.

### **3. Branch**

A branch is taxed at the rate of 30% (25% as from FY2020). The distribution of profits will be subject to a 7% Income Tax withholding (13% as from FY2020). This creates an effective 34.9% rate for FY 2018/2019 and an effective 34.7% rate for FY2020.

## **4. Corporation and Limited Liability Companies**

Corporations and limited liability companies are taxed at the rate of 30% (25% as from FY2020). Dividend distributions will be subject to a 7% Income Tax withholding rate (13% as from FY2020). This creates an effective 34.9% rate for FY2018/2019 and an effective 34.7% rate for FY2020.

## **5. Selected Tax Computation Rules**

### **a. Losses**

Business organizations may generally deduct expenses and losses incurred for obtaining local-source income. Net operating losses (“NOLs”) may be carried forward for up to five years.

### **b. Depreciation**

Fixed assets may be depreciated on a straight-line basis. The usual annual depreciation rate for machinery and equipment is 10%; for dies, tools and vehicles, 20%; and for buildings, 2%. In special cases, tax authorities may authorize higher depreciation rates.

### **c. Transactions Between Related Parties**

Special rules apply to deductions arising from transactions between an Argentine party and a foreign related party.

In the case of payments under the Transfer of Technology Law, an Argentine licensee may deduct royalty payments only if the corresponding license agreement has been registered with the INPI (see Section B, “Transfer of Technology,” above) and if payments are supported by a transfer pricing study.

For other intercompany transactions, an Argentine taxpayer may deduct its expenses if the charges are consistent with arm's length practices supported by a transfer pricing study.

d. Presumed net income for foreign beneficiaries

Payments of income made to foreign beneficiaries are generally subject to 35% income tax withholding. For certain kinds of income, as described below, the Income Tax Law presumes a fixed level of net income to which the 35% income tax withholding rate applies, as follows:

Kind of Income	Presumed Income	Effective Withholding
Amounts paid to foreign shipping companies for non-containerized transportation services	10%	3.5%
Amounts paid to foreign shipping companies for containerized transportation services	20%	7%
Amounts paid to foreign reinsurance companies	10%	3.5%
Contracts complying with the requirements of the Transfer of Technology Law:		
-Amounts paid for technical assistance, engineering or consulting services	60%	21%
-Amounts paid for the assignment of rights or the granting of licenses on technology not falling within the preceding paragraph or licenses of	80%	28%

Kind of Income	Presumed Income	Effective Withholding
patents or trademarks.		
<p>Interest on foreign credit:</p> <p>a) The borrower is an Argentine financial entity.</p> <p>b) The borrower is an Argentine individual or legal entity, and the lender is a banking or financial entity that is subject to supervision by a specific banking supervising authority and not incorporated in a low tax jurisdiction or, if it is incorporated in a low tax jurisdiction, incorporated in a country which executed a treaty to exchange information with the Argentine Republic. Additionally, banking secrecy, exchange secrecy, and the like, should not be raised as an objection to a request for information by the respective tax authority.</p> <p>c) The borrower is an Argentine corporation (excluding banking financial entities) or individuals, and the lender does not meet the requirements mentioned in b) above.</p>	<p>43%</p> <p>43%</p> <p>100%</p>	<p>15.05%</p> <p>15.05%</p> <p>35%</p>
Copyrights and intellectual property	35%	12.25%

Kind of Income	Presumed Income	Effective Withholding
rights		
Salaries, fees, and other compensations of expatriates domiciled in the Argentine Republic for no more than six months in the taxable year	70%	24.5%
Lease of personal property by a foreign lessor	40%	14%
Rent paid on Argentine realty	60%	21%
Transfer for consideration of assets located or economically used in the Argentine Republic but belonging to corporations registered or located abroad <sup>4</sup>	50%	17.5%
Any other payment to a foreign beneficiary not contemplated above	90%	31.5%

e. Agreements to Avoid Double Taxation (the “Agreements”)

The Agreements are executed to avoid overlapping of taxes among residents in two or more different Contracting States on the same taxable issue, within the same period, and charged against the same taxpayer.

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<sup>4</sup> Taxpayers may opt to pay tax based on actual net income, in which case a 35% income tax withholding shall apply to such actual net income and not to the gross amount paid.

Thus, they are intended to soften the tax burden on the taxable issue in a transaction between two residents of different Contracting States under the Agreements.

The Argentine Republic has executed and ratified Agreements with the following countries<sup>5</sup>: Australia, Belgium, Bolivia, Brazil<sup>6</sup>, Canada, Chile, Denmark, France, Finland, Germany, Great Britain and Northern Ireland, Italy, Mexico, The Netherlands, Norway, Sweden, Russia, Spain and Switzerland.

In general, the Agreements ratified by the Argentine Republic are applied to taxes on income or revenue, shareholders' equity, and potential benefits.

In this sense, the Agreements prevail over the Income Tax Law; therefore, foreign residents will be benefited by the application of reduced rates established in the Agreement whenever they will make a payment subject to the tax withholding as already explained.

## **H. Sale of Equity, shares and other securities**

The sale of shares of an Argentine corporation by a foreign corporate seller or foreign individual seller is taxable at a 13.5% withholding tax rate on the gross sale price (alternatively, a 15% withholding tax rate on the net income obtained by the seller may be applied at the seller's request).

The sale of shares of an Argentine corporation by an Argentine individual seller is taxable at the rate of 15% on the net income.

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<sup>5</sup> A treaty with the United Arab Emirates is pending approval.

<sup>6</sup> This treaty is currently under revision.

The sale of shares of an Argentine corporation by an Argentine corporate seller is taxable at the rate of 30% (FY2018/2019) and 25% (as from FY2020) on the net income.

It should be noted that the indirect sale of Argentine legal entities by foreign sellers will be taxable, provided certain conditions are met.

Income obtained by individuals who are Argentine residents arising from the sale, exchange, barter or disposal of shares, values that represent shares or shares certificates of deposit listed on a market approved by the Argentine Securities and Exchange Commission (CNV) will be exempted from Income Tax. This exemption will also be applicable for foreign beneficiaries provided that they are not residents of a non-cooperative jurisdiction in the exchange of tax information or the invested funds do not originate from a non-cooperative jurisdiction in the exchange of tax information.

Furthermore, foreign beneficiaries will be exempted from Income Tax with respect to these income sources: interest and income arising from the sale, exchange, barter or disposal of (i) government securities – securities, bonds and other values issued by the Federal, Provincial, Municipal Government and the City of Buenos Aires-; (ii) corporate bonds (Article 36 Law No. 23,576); (iii) debt securities issued on listed financial trusts created in Argentina and quotas of listed investment funds created in Argentina (Article 1, Law No. 24,083); and (iv) representative securities or shares certificates of deposits or other values issued abroad by entities domiciled or incorporated in Argentina that are authorized by the CNV. LEBACS (Central Bank Letters) are not included in this exemption.

The payment mechanism of this tax was regulated by Federal Tax Authority General Resolution 4227/18.

## I. Value-Added Tax (VAT)

The Argentine VAT is similar to the European Union's VAT. It consists of an output tax and input tax levied on the sale of goods located within the country, contracts for work or contracts for the provision of services, or lease agreements executed within the country or in a foreign country, and imports of goods and services. The excess of the output tax over the input tax must be paid within a certain period (e.g., 20 days from the end of each calendar month). There are exemptions to some products and services. The VAT is applied to the net price of the goods or services, generally at the rate of 21%. This rate is different in some specific cases (may be 10.5% or 27%).

## J. Minimum Presumed Income Tax

The Minimum Presumed Income Tax ("MPIT") is levied at a national level and is applied at the rate of 1% to assets located in the Argentine Republic or abroad. It is a tax generated on a presumption of income obtained by the taxpayer; this presumption is assessed in relation to the taxpayer's assets at the end of the calendar year for individuals or the fiscal year for corporations.

Most companies, non profit organizations, rural properties owned by Argentine residents, *sucesiones indivisas* (undivided estates of deceased persons), trusts, excluding financial trusts, closed-end investment funds (*Fondos Comunes de Inversión cerrados*), and permanent establishments domiciled or located in Argentina but belonging to companies or individuals domiciled abroad are subject to the MPIT.

The following assets shall not be computed in calculating this tax:

Assets located in the province of Tierra del Fuego, Antarctica and South Atlantic Islands (in accordance with Law No. 19,640); assets belonging to entities engaged in mining investment activities falling within the scope of Law No. 24,196; assets belonging to entities exempt from income tax in accordance with Section 20 of the Income Tax Law; assets exempted by federal laws or international conventions; shares and other kinds of participations in companies subject to this tax; assets transferred by trustors, subject to this tax, to trustees of non-financial trusts; interests in non-financial investment funds; and assets with an aggregate value not exceeding AR\$200,000.

Foreign-owned Argentine companies should consider as computable assets, all credits against their parent company or individual owner, or any parent's branches, or those corporations that directly or indirectly "control" the former.

Some assets are not computed in the tax base; e.g.: movable properties, investments in new buildings or improvements in previously built ones, subject to some time limits.

Income tax paid in a given fiscal year shall be credited against the tax liability arising from MPIT for the same fiscal year. It may be carried forward. Taxpayers are entitled to compute any tax levied and effectively paid upon their assets located abroad up to the increase in the MPIT deriving from the inclusion of such assets in the taxable base.

Nonetheless, note that -pursuant to Law No. 27,260-, the MPIT has been revoked as from January 1st, 2019. Hence, the MPIT shall not apply on fiscal periods initiated on such date and after.

## K. Personal Asset Tax (“PAT”)

At the end of the calendar year (e.g., December 31), personal asset tax is levied at the national level and on all property owned by taxpayers located in Argentina and abroad.

For individuals and *sucesiones indivisas* (undivided estates of deceased persons) domiciled in Argentina, the PAT shall apply at the rate of 0.25%. Equity holdings or interests in Argentine companies are also subject to a 0.25% rate. The Supreme Court has recently stated that this tax does not apply to Argentine branches. Individuals and *sucesiones indivisas* (undivided estates of deceased persons) not domiciled in the Argentine Republic and non-Argentine companies are subject to this tax at the rate of 0.25% on their equity holdings or interests in Argentine companies.

Individuals and *sucesiones indivisas* (undivided estates of deceased persons) not domiciled in the Argentine Republic are subject to this tax at the rate of 0.25% on their other assets located in the Argentine Republic, but only if such other assets are co-owned, possessed, administered, used, enjoyed, disposed of, deposited with or otherwise under the custody of an Argentine taxpayer.

Pursuant to Law No. 27,260, taxpayers who duly complied with their respective fiscal obligations during fiscal years 2014 and 2015 and meet other formal requirements, shall be exempt from the arising PAT for fiscal periods 2016, 2017 and 2018.

## **L. Tax on Debits and Credits on Checking Accounts and Other Transactions**

This tax shall be applied, in general, to all credits and debits made in any bank account, regardless of their nature, and some other related transactions.

The general tax rate is 0.6% for credits and 0.6% for debits. In those cases set forth in (b) and (c) above, the rate is 1.2%, except in certain cases.

Moreover, there are special tax rates for certain transactions performed by specific individuals.

## **M. Gross Receipts Tax**

This is a provincial tax levied on the gross receipts of independent activities performed for profit. It is established by each of the Argentine provinces. The general rate is usually 3%, but such rate will vary depending on the jurisdiction and the activities.

## **N. Stamp Tax**

The stamp tax is a local tax on documents that is usually applied at the rate of 1% (the rate will vary depending on each local jurisdiction) on any document or exchange of documents evidencing the creation, amendment or extinction of pecuniary rights or obligations. This tax is payable upon the local execution of what is considered a “taxable document” in each of the provinces. It also applies to a document having “effects” in a given province other than the one where it was executed. (Local “effects” refers to the acceptance, protest, or performance of the obligation or the filing of the relevant

document with an administrative or judicial local authority for enforcement purposes.)

## **O. Municipality Fees**

There are almost 1,000 municipalities in the Argentine Republic. These “*autonomous*” entities are empowered to set taxes (fees) as long as said taxes do not interfere with national or provincial taxes. These fees are levied for certain services rendered by the municipalities, such as hygiene and security services. The gross receipts arising from the taxpayer’s activities serve as the taxable base of these fees.

## **P. Employment and Labor Law**

Argentine law applies to employment within the Argentine territory, irrespective of the place where the contract was entered into.

### **1. Hiring**

Unless otherwise agreed upon by the parties, the Employment Contract Law (“ECL”) sets forth the presumption that an employment relationship is agreed for an indefinite term and with an initial “trial period” of three months.

During the trial period, the contract may be terminated without just cause (with a 15-day notice) and the employee is not entitled to the mandatory severance payments.

Indefinite-term employment contracts need not be evidenced in writing. The ECL, however, sets forth the rights and duties of both parties, along with the minimum benefits.

In certain cases a written contract is required, namely:

- a. Fixed-term contract: Its term may not exceed five years, and employers must have an extraordinary cause to contract under this category.
- b. Temporary contract: To perform a specific piece of work or to provide a specific service determined by extraordinary circumstances.
- c. Seasonal contract: Executed based on the kind of activity performed by the employee at a specified time of the year.
- d. Apprenticeship contracts: Executed by students who meet certain requirements, for the purpose of learning a craft, trade or profession related to their career or studies.

## **2. Employees' Rights**

Employees are entitled to receive:

- a. Minimum salary: Employers and employees are free to agree on the salary (i.e., base and variable compensation, bonuses, stock purchase, stock options, fringe benefits). Certain limits apply, however; they may not agree on a salary that is below the minimum wage fixed by the Government, which is periodically updated.
- b. Compensation set forth in the collective bargaining agreements: Salaries must be at least equal to the ones foreseen in the employee's category in the salary scales of the collective bargaining agreement, as applicable to the employer's activity. The collective bargaining agreements may also set forth specific payments which are also mandatory, such as production awards, professional degree and seniority.

- c. Equal pay: The rule “equal pay for equal task” applies. However, employers may pay incentives to employees who perform outstanding services.
  
- d. Overtime pay: Regular employees are entitled to overtime pay whenever they work in excess of the working schedule (which is 48 hours per week or 8 hours per day). Employees who work on an irregular daily schedule are entitled to overtime pay when they exceed 9 hours per day. Night work and hazardous work have reduced working schedules. Managers and directors are not subject to the mandatory rules regarding working hours and, subsequently, are not entitled to overtime pay.
  
- e. Thirteenth Mandatory Salary: Employers must pay the so-called *Sueldo Anual Complementario* (SAC) or Thirteenth Mandatory Salary in two semi-annual installments: one on June 30 and the other on December 18 of each year. The amount of each installment is equivalent to 50% of the highest remuneration vested by the employee in the relevant semester.
  
- f. Paid leaves: Employees are entitled to paid vacation leave ranging from 14 to 35 calendar days, depending on the employee’s seniority in the job.

Employees are also entitled to pay sick leave ranging from 3 to 12 months, depending on the employee’s seniority in the job and family responsibilities (e.g., minor children in charge of employee).

Finally, employees are entitled to enjoy holidays and special leaves as set forth by the ECL or as specified in the collective bargaining agreement.

- g. Life insurance: Employers must hire and pay the collective life insurance premium for the benefit of their employees. Collective bargaining agreements may establish mandatory additional coverage.
- h. Labor risks insurance or workers' compensation insurance: Employers must hire and pay insurance premium covering labor diseases and accidents with a private and authorized *Aseguradora de Riesgos de Trabajo (ART)* (Labor Risk Insurance Company).
- i. Medical assistance provided by health care organizations or providers (*Obras Sociales*): The coverage is paid for by the public social security system through the contributions of employees and employers. Blue-collar employees are entitled to choose from a list of health organizations managed by trade unions, while white-collar employees (in certain situations) are entitled to choose from a list of health organizations managed by executives.
- j. Subsidies: Family allowances and unemployment subsidy are supported by the social security system through the contributions of employees and employers. Family allowances include a three-month paid maternity leave, and the unemployment subsidy may extend to one year of monthly payments (provided the respective beneficiary meets the requirements set forth in the Law).
- k. Severance pay: Employees are entitled to severance pay upon their dismissal without just cause, death or total disability, upon the employer's bankruptcy or due to force majeure or employer's crisis.

### 3. Small Companies

In the Argentine Republic, certain small and medium sized companies known as “PyMEs” (*Pequeñas y Medianas Empresas*) are subject to a specific regulation and receive a particular treatment from the authorities. Upon fulfillment of the corresponding legal requirements, the PyMEs may be entitled to benefits in specific areas (e.g., government subsidies for credits, preference in public bids).

Argentine Law No. 24,467 specifically regulates the employment relationships in the so-called “Small Companies” (*Pequeñas Empresas*). Pursuant to said Law, Small Companies are those with less than 40 employees and a maximum annual billing that will depend on the type of activity that it carries out.

### 4. Termination

#### a. Procedure

The employer and/or the employee may terminate the employment relationship by or upon:

- mutual consent;
- employee’s resignation;
- employer’s dismissal, with or without just cause;
- employee’s death or total disability;
- employee’s retirement;
- employer’s bankruptcy; or
- expiration of an agreed fixed term of employment.

When employees are dismissed without just cause, in addition to the accruals (i.e., wages for worked days during the month of termination, proportional compensation for accrued and non-enjoyed vacations, and accrued thirteenth mandatory salary), employers must pay a mandatory package consisting of severance payment based on seniority and, if no prior written notice was given, severance pay in lieu of prior termination notice.

The employer may terminate the employment relationship with just cause when the employee commits a serious offense against him or her. The activities or actions that may be considered offensive or prejudicial to the employer are evaluated on a case-by-case basis and determined in accordance with the general principles of law and legal precedents. The employer must provide the employee with a written explanation of the cause of termination. The employee may object to the termination grounds by filing a legal action in court, and the employer bears the burden of proof. Employees may also terminate the employment contract with just cause (constructive dismissal).

When an employee is dismissed with just cause or resigns, or when the parties agree to terminate the employment relationship by mutual consent, the employer only has to pay the accruals (i.e., wages for days worked during the month of termination, proportional compensation for accrued and non-enjoyed vacations and accrued thirteenth mandatory salary and shall not make any other mandatory severance payments (i.e., severance pay based on seniority, severance payment in lieu of prior termination notice).

Employers may reduce the mandatory severance payment package by paying 50% of the severance pay based on seniority in case of justified redundancies, by proving “force majeure,” “lack or reduction of work,” or “economic or technological reasons” not attributed to the employer,

unforeseen or beyond the employer's control. In such a case, layoffs must be carried out in order of seniority. Case law has made it very difficult, however, to allege that the situation was unforeseen or beyond the employer's control, stating that employers are the ones who must bear the risks of their business and the severance cost of terminating a relationship.

Massive layoffs must comply with a special procedure before the labor authorities, in the presence of the trade union, and the employer must give evidence of the critical situation. In such cases, the parties (the employer and the trade union) may agree upon a reasonable severance pay package which the Ministry of Labor must evaluate and eventually approve. Employees may challenge the reduced severance payment package when they do not agree to a settlement (labor courts usually accept such claims).

In all cases, employers are free to make additional payments (over and above the minimum and mandatory severance payments) to the terminated or resigning employee.

b. Mandatory severance pay based on seniority

The employer must pay a mandatory severance pay based on seniority, equivalent to one gross highest monthly and normal salary for each year of service, or a fraction thereof (in excess of three months). In no event may the mandatory severance pay based on seniority be lower than one actual gross monthly salary.

For purposes of calculating this compensation, the highest monthly and regular salary of the last year has a statutory ceiling. It may not exceed three times the average of the total remuneration set in the applicable collective bargaining agreement. If more than one collective bargaining agreement is applicable to the activity of the employer, the one most

favorable to the employee shall be applied. This ceiling is applicable to unionized and non unionized employees.

However, pursuant to a Supreme Court decision of 2004, the statutory ceiling may not reduce the employee's highest salary by more than 33%. Therefore, the base salary used as a factor may not be lower than 67% of the highest monthly and regular salary earned by the employee during the last year of employment. This base salary must be multiplied by each year of service or a fraction thereof (in excess of three months).

This payment is not subject to any taxes or social security contributions or withholdings.

The Supreme Court of Justice of Buenos Aires Province has ruled that employers who terminate without cause within the Buenos Aires Province jurisdiction must also pay a thirteenth mandatory salary on this amount.

c. Severance payment in lieu of prior termination notice

Absence of a prior written termination notice entitles employees to claim severance payments, which amounts are calculated by reference to the seniority of the employee terminated (i.e., a higher number of salaries if the seniority increases).

In addition, employers must pay the salary for the days remaining in the month in which the termination occurred. The employer must also pay the proportion of the thirteenth mandatory salary on this item, which is an additional 1/12.

The mandatory severance payment in lieu of a prior termination notice and the balance salary for the month of termination, are not subject to social security contributions or withholdings, but are subject to income tax withholdings.

d. Protected categories

The legislation protects certain categories of employees in a different way.

Pregnant, new mothers and newly married employees who have been dismissed without just cause are entitled to an additional severance indemnity payment equal to one year of their salary.

Union representatives may not be terminated. The employer may not change their work conditions without any just cause within one year after the end of their representation. The employer must follow a special procedure before the labor courts in order to dismiss a union representative with just cause. If the procedure is not followed, the representative may choose between being reinstated to his or her job or receiving, apart from the mandatory severance pay package, an additional severance pay equal to the total salary he would have received up to the end of his or her representation period, plus salary for one additional year.

According to Antidiscrimination Law No. 23,592, employees dismissed on the grounds of discrimination because of their race, religion, nationality, ideology, political or union opinion, sex, and financial, social and/or physical condition may request their reinstatement or any other measure to remove the effect of the discriminatory act or to cease the discriminatory act by means of summary proceedings. Discriminated employees who are reinstated are entitled to back wages. Employees also have the option to terminate the employment contract with cause and claim mandatory severance payments from their employers under constructive dismissal. Affected employees may also claim compensation for pain and suffering or for emotional distress.

Employees who are not properly registered in the employer's payroll are entitled to additional amounts that will increase the mandatory severance package considerably.

The other instances in which employers are obliged to give additional pay include breach of a fixed-term employment contract; lack of payment of the mandatory severance package in due time; failure to provide employment certificates in due time; and those involving traveling salespeople.

## **5. Collective Bargaining Agreements (CBAs)**

The Law governing CBAs rules that collective parties (i.e.: the pertinent board or chamber representing employer of the pertinent sector and the legally recognized labor union representing the employees of said activity or craft) may negotiate the scope and applicability of the CBA based on: (a) the employer's industry (car manufacturing); (b) jobs within an industry (supervisors); (c) the worker's job duties (traveling salespeople); or (d) the Company (all workers of Company "X").

Under this Law, companies may not freely operate a union. Almost all industries and activities already have a trade union that collectively represents the employees.

Unless previously agreed upon in the CBA, executive or senior employees and managers are not subject to CBA provisions or to union representation. However, employees who do not qualify as executive or senior employees or managers are subject to the CBA and union representation.

Employees may freely become members of a union or opt out of it, but the trade union will still maintain collective representation.

The Ministry of Labor must approve the CBAs. If such approval is obtained, CBAs are binding not only to members of the trade unions and employers' associations that are parties to them but also to all workers and employers in the particular activity or industry involved. To secure compliance with the agreements, workers must be represented by recognized (acknowledged) trade unions.

CBAs could impose additional contributions for the trade union that negotiated the agreement.

## **6. Special Laws**

Several laws have been passed to regulate the activities of various categories of employees. The most important of them include the activities of traveling salespeople, seamen, home-based workers, agrarian workers, professional journalists, private teachers, and domestic workers.

## **7. Social Security Regulations**

Employees' salaries are subject to social security payments. Employer's contributions depend upon their activity: (a) 26.7% if the employer's principal activity consists in the provision of services or in commercial activities (some exceptions apply) and if sales do not exceed certain amounts that are periodically adjusted; and (b) 23,5% for the rest of the employers not included in the section.

Additionally, since December 2017 the so-called Tax Reform, enacted as Law 27,430, established an exemption limit to be applied to employers' contributions, which shall be updated periodically. Employees' contributions to the retirement system amount to 17%, including Retirement Fund, Medical Benefits for Retired Employees, Health Care Insurance and Medical Coverage.

Contributions to the social security system are in accordance with this chart:

<b>Concept</b>	<b>Employees' Contribution</b>	<b>Employers' Contribution</b>	
	SIPA (in %)	Commerce and Services with sales exceeding certain amounts (in %)	Remaining activities (in %)
<b>Retirement and Pension</b> <b>(Law 24,241)</b>	11.00	12.53	10.47
<b>Medical Benefits for Retired Employees</b> <b>(Law 19,032)</b>	3.00	1.60	1.54
<b>Family Allowances</b> <b>(Law 24,714)</b>	---	5.48	4.57
<b>Unemployment Fund</b> <b>(Law 24,013)</b>	---	1.09	0.92

<b>Concept</b>	<b>Employees' Contribution</b>	<b>Employers' Contribution</b>	
	SIPA (in %)	Commerce and Services with sales exceeding certain amounts  (in %)	Remaining activities  (in %)
<b>Public Health Insurer  (Law 23,660)  Medical Coverage  (Laws 23,660 and 23,661)</b>	3.00	6.00	6.00
<b>TOTAL</b>	17.00	26.70	23.50

The ART (workers' compensation or labor risk insurance company) premium is not included in the above contribution rates. Employers must pay for it. This premium is usually equivalent to an average of 3% of the payroll.

For the purpose of calculating the social security contributions paid by employees, there is a "legal ceiling" or "legal cap" (maximum amount) to be applied to the employee's gross monthly salary. This legal ceiling is periodically adjusted. The

portion of the employee's monthly salary exceeding the legal ceiling is not subject to social security contributions.

## **Q. The Argentine Financial System**

### **1. Monetary and Banking Authorities**

The BCRA is the financial agent of the federal Government which conducts the Government's monetary policy; handles the foreign currency reserves of the country; controls financial entities (including banks), and issues regulations and special rules related thereto.

### **2. Financial Institutions**

Financial Entities' Law No. 21,526, as amended (the "FEL"), defines different categories of operators in the financial market: commercial banks, investment banks, mortgage banks, financial companies, savings and loan institutions, and cooperative credit entities.

Commercial banks may engage in almost any type of transaction and related services traditionally performed by commercial banks around the world.

Some relevant restrictions on financial entities are as follows:

- a. They may not run companies engaged in commercial, industrial or farming activities or any other activities without prior BCRA authorization.
- b. They may not encumber their assets without prior BCRA authorization.
- c. They may not accept their own shares as collateral security for any kind of transaction.

- d. They may not enter into any kind of transaction with their directors, officers, managers or any other persons directly related to the institution under conditions more favorable than those offered to independent third parties.

### **3. Operating Restrictions**

Certain minimum capital requirements are to be maintained on a permanent basis.

Loans to any client or any related group of clients are subject to restrictions, depending on the type of loan.

### **4. Authorization of New Financial Entities**

In reviewing an application for the authorization of a new financial entity, the BCRA gives special consideration to the financial market condition, the convenience of increasing the number of authorized financial entities and the background of the applicant. The background and technical knowledge of the founders, directors and officers of the new financial entity are particularly important.

### **5. Foreign Financial Institutions**

Until 1994, the BCRA used to consider only the applications of foreign financial institutions from countries that granted the same treatment to Argentine financial institutions. While, the full power of the BCRA to reject applications on the basis of its discretionary powers still remains, the reciprocity treatment has been abrogated.

## **6. Mergers and Acquisitions**

Mergers and acquisitions of financial entities are subject to BCRA's prior approval.

BCRA regulations require directors and statutory auditors of a financial entity to report any acquisition of shares, the results of which may:

- a. change the qualification of the financial entity;
- b. alter the control structure among the shareholders; or
- c. affect at least 5% of the outstanding capital or votes of the entity.

All purchases of shares of financial entities must also be reported to the BCRA for approval after the execution of the agreement or letter of intent or the receipt of any payment, whichever shall occur first, regardless of the amount involved. In the absence of such approval, the sale may not be done, shares may not be delivered, and no payment in excess of 20% of the purchase price may be made.

## **7. Branches of Foreign Institutions**

Branches of foreign institutions already set up and those which may be authorized in the future shall effectively and permanently place, in the country, the capital which may correspond and shall be subject to local laws and courts. Creditors in the country shall have preference over the assets that such entity may have within the national territory.

## **R. Capital Markets**

### **1. Securities Market**

The *Comisión Nacional de Valores* (National Securities Commission; the “CNV”) regulates markets dealing with the public offering of securities in the Argentine Republic. Individuals and entities dealing in public securities markets, as well as in the public offering of all securities other than the primary issues of Government securities, are subject to the CNV’s control.

Since May 1, 1993, all securities have been exclusively traded on the stock exchange. Government and debt notes may be traded either on the stock exchange or the over-the-counter market (the “OTC market”).

The main stock exchanges are located in the cities of Buenos Aires, Rosario, Córdoba, La Plata and Mendoza. The Buenos Aires Stock Exchange (“BASE”), founded in 1854, is the oldest and largest one. Nearly 90% of all securities are traded there.

The Securities Markets Act of 2012 and its regulations provide for CNV’s authority, duties and obligations as the controller of the securities market in Argentina enhancing its supervisory powers in comparison with old regulations, i.e. CNV can intervene in public companies’ board of directors upon any minority shareholder request holding at least 2% of the corporate capital. The CNV is a self-regulated public entity with jurisdiction throughout the country.

The National Government owns stock in several public companies through the ANSES (National Administration of Social Security) since the termination of Pension Funds system and nationalization of the social security services.

The debt and equity securities traded on the exchange and the OTC market are mostly deposited in the *Caja de Valores S.A.* (“CDV”), which acts as a central depository and clearing house for securities trading. The CDV is a corporation whose shares are now held by Bolsas y Mercados Argentinos (“BYMA”).

In 2017, BYMA was created by *Mercado de Valores de Buenos Aires S.A* (“Merval”), a private entity whose members are stock brokers. While BASE authorizes the listing of all available financial securities and controls the listed companies, Merval is affiliated to BASE and negotiates, liquidates and guarantees all the operations that an investor carries out every day. BYMA was created in order to continue in a more effective manner the activities conducted by investors in the stock exchange.

Argentine Congress is currently working on a bill in order to amend the regulation on the capital market. Such bill includes, among others, specific regulation on derivatives and amendments to the oversight powers of the CNV.

## **2. Obligaciones Negociables (Debt Notes)**

Law No. 23,576 (Ley de “Obligaciones Negociables”) (“Debt Notes”), as amended by Law No. 23,962 (the “ON Law”), helped in the development of the corporate bond market in the Argentine Republic. Pursuant to the provisions of said ON Law, Debt Notes may be issued to bearer, in registered or book-entry forms and may be denominated in either local or foreign currency. Rates for debt notes may be fixed or floating and may vary substantially in accordance with market conditions and the issuer’s creditworthiness.

Pursuant to the ON Law, Argentine corporations, cooperatives, non-profit organizations and branches of foreign

corporations are empowered to issue debt notes upon compliance with the legal requirements of the ON Law. Different series of debt notes belonging to the same class shall have the same rights. A different series of the same class of debt notes may be issued by the same issuer, but a new series pertaining to the same class may not be issued until all of the debt notes corresponding to previous issuances have been sold. Debt Notes may be issued with privileged, simple or no guarantee.

It is not necessary that the bylaws expressly contemplate the issuance of debt notes. Such decision must be adopted by an ordinary shareholders' meeting that may delegate to the board of directors all necessary powers to approve the terms and conditions of the debt notes to be issued.

### **3. Equities**

New issues may be underwritten by investment banks, brokerage firms and securities dealers and are required to be previously registered with the CNV, which reviews the issuer's compliance with regulatory and disclosure procedures. The CNV currently imposes no requirements on listing with respect to an issuer's size, capital, number of shares outstanding or earnings. However, for listing purposes, the issuer must also be previously approved by the relevant stock exchange, which reviews the issuer's net worth or shareholders' equity, financial standing and prospects. Generally, BASE requires an issuer to show profits during the previous two years, although a separate procedure is available to companies without an operating history.

Shares are issued at par, and their offering price may be of any value (except below par) as long as it is adequately justified by the company, taking into account market quotations and the net worth and profit prospects of the company, and provided it will not result in any unjustified dilution of the existing

shareholders, being entitled to preemptive rights with respect to the new issuances of shares.

## **S. Environment**

### **1. Sources of Environmental Legislation**

Argentina adhered to the international Sustainable Development paradigm when its Constitution was reformed in 1994. According to new constitutional articles No. 41, No. 43, and No. 120, environmental issues are to be treated by a Federal core of standards and procedures, given by the Federal Environmental Law (Ley General del Ambiente N° 25.675 - “LGA”).

Of course, the Argentine Constitution still provides for a decentralized model where federal rules prevail over provincial and municipal laws and regulations, which complement the federal ones and deal with specific local environmental matters. In some cases, provincial Constitutions include environmental provisions and address environmental matters.

Finally, it is worth mentioning that the Constitution states that substantive criminal, commercial, civil and mining laws are regulated by the Federal Government as well as federal administrative regulations. Procedures, on the other hand, are Provincial and Municipal jurisdiction.

In 2015, the new Civil and Commercial Code introduced relevant provisions and guidelines to environmental matters. Although there are still issues that can lead to conflicts as a matter of jurisdiction between Federal, Provincial or Municipal regulations, much progress was made.

The New Civil and Commercial Code introduced “preventive” actions, to allow judicial actions intending to prevent damages.

Also, the New Civil and Commercial Code established expressly the order of priority of the regulations as regards environmental matters. The role and responsibility of the Government will be ruled by specific regulations as from now.

## **2. Federal Legislation**

The main federal applicable regulation is set forth as follows.

### **a. Environmental Law & Particular Regimes**

The LGA was enacted in 2002 and provides for the minimum requirements for obtaining adequate management of the environment, preservation and protection of the biological diversity, and implementation of sustainable development. The law has public policy status and it is applicable within the whole Argentine territory.

The LGA frames environmental matters by competence, both horizontally (Ministries, Secretaries, etc.) and vertically (Federal, Provincial, and Municipal). It has been already mentioned that it poses the substantial and formal environmental standard, which must be respected each time an area connected with the environment is regulated (e.g., soil, water, mining, forestry, fauna and flora, fishing, energy, oil and gas, nuclear, wastes, etc.).

The LGA introduces the following elements in the Argentine regulatory body:

- It sets minimum standards that can be deepened both federally and provincially each time a related area is regulated.
- It recognizes Federal substance to environmental legislative policies and administrative implementations. The LGA set up a Federal Counsel

for the Environment (COFEMA) to coordinate these actions at every level. In addition, it provides for the possibility of inter-province or federal-provincial agreements on specific topics.

- It imposes the submission of an environmental impact assessment before any craftsmanship project begins.
- It recognizes a public and general right of access to environmental information, and determines a national database of environmental standards to be implemented.
- It instructs the participation of citizens in the analysis of any projects that might have environmental effects as pre-requisite to its approval.
- It outlines environmental education as a policy to be implemented nationally.
- It foresees the regulation of local compensation funds for damage reparation. It does also provide for the future creation of environmental insurance contracts.

Regarding particular regimes, there are several environmental areas with federal regulation at the moment, including:

- Land usage (Civil and Commercial Code)
- Mining and oil & gas activities (Mining Code and Hydrocarbon regulations)
- Atmosphere protection (Vienna Convention for the Protection of the Ozone Layer and its Protocols; New York Framework Convention on Climate Change and its Protocol; International Treaties)

- Air protection (Law No. 20,284)
- Water usage (Law No. 25,688)
- Native forests protection (Law No. 26,331)
- Fauna protection (Law No. 22,421, among others; International Treaties regarding migratory species, among other)
- Hazardous waste (Law No. 23,922 and Law No. 24,051; Basel Convention on the Control of Transboundary Movement of Hazardous Wastes), industrial waste (Law No. 25,612), and domiciliary waste (Law No. 15,916) regulation
- PBCs regulation (Law No. 25,670; and Stockholm Convention on Persistent Organic Pollutants Law No. 26,011)
- Access to environmental public information (Law No. 25,831)
- Burning activities regulation (Law No. 26,562)
- Glaciers and periglacial areas protection (Law No. 26,639)
- Forest and rural fire management (Law No. 26,815)

Some of the abovementioned legal regimes need separate spot treatment. It shall be addressed in the following sections.

b. Environmental Insurance

On September 6, 2012, a new environmental insurance regulation was approved by Decree 1638/2012. This Joint

Resolution passed the basic insurance contract conditions regarding collective environmental damage.

The environmental insurance regime foresees the necessity to execute an insurance contract in cases of projects that imply *risks to human health* or which might have *harsh effects on natural resources*. The goal of the environmental insurance contract is to secure funding in case of damage and need for rearrangement of environmental damaged conditions to their initial state. The National Insurance Contracts Bureau is in charge of enacting the insurance schemes, under the guidelines set by Decree 1638/2012.

c. Hazardous Waste

Hazardous Waste Law No. 24,051, enacted in 1992 (the “HWL”), and Decree No. 831/93 –with its subsequent amendments– regulate the generation, handling, transportation, treatment and disposal of hazardous waste. The HWL defines hazardous waste as waste capable of adversely affecting human beings, flora or fauna or of polluting the soil, water or the environment in general. Domestic and radioactive waste and waste resulting from the ordinary operation of vessels are not subject to the HWL but are ruled by international conventions and specific laws.

The government agency in charge of enforcing the HWL is the Secretariat of Natural Resources and Environment (the “SNRE”), which keeps the Registry of Generators and Operators of Hazardous Waste (the “RGOHW”). All companies involved in the generation, transportation, treatment and disposal of hazardous waste must be registered with the RGOHW. Provided that certain requirements set forth in the HWL are met, the SNRE issues environmental certificates authorizing the generation, transportation, treatment and disposal of hazardous waste.

The HWL establishes a specific civil liability regime. Violations of the HWL are subject to criminal and administrative sanctions.

d. Water Pollution

Pursuant to Decree No. 776/92, the SNRE is the government agency in charge of controlling water pollution under federal jurisdiction. It has the power to inspect industrial facilities, analyze samples of industrial effluents, and to impose fines for violations of the standards in force.

Law No. 25,688, enacted in 2003, although subject to several objections, regulates the minimum requirements for preserving, taking advantage of and ensuring a reasonable use of water.

e. Air Pollution

Law No. 20,284, enacted in 1973, regulates air pollution under federal jurisdiction. Its provisions are applied to all fixed and mobile sources of air pollution. Violations of the provisions of the law are subject to administrative sanctions.

f. Oil and Gas

Resolution No. 105/92 of the Secretariat of Energy (the “SE”) contains specific regulations and procedures for the protection of the environment during hydrocarbon exploration and exploitation.

During exploration, companies must prepare an environmental impact report to be filed with the SE. No drilling activity may be carried out before filing said environmental impact report. Once an oil field has been discovered, companies must prepare an environmental assessment report to be filed with the SE.

Thereafter, environmental reports must be filed with the SE on an annual basis.

### **3. Provincial and Municipal Legislation**

Environmental laws and regulations vary from one jurisdiction to another. In general, when a new federal environmental law is enacted, the Federal Government invites the provinces to adhere to the new law. If a provincial government adheres thereto, the new law becomes applicable in such province through the procedure detailed by the provincial regulation.

## **T. Mining**

### **1. Exploration Permits**

Any company or individual may request an exclusive exploration permit. The application filed to obtain the permit must include: (i) the geographic coordinates of the limits of the requested area; (ii) the purpose of the exploration; (iii) the name of the individual or company requesting the permit; (iv) the name of the owner of the surface land; (v) a description of the work to be done, including the estimated investment and equipment; and (vi) a sworn statement affirming that the request does not violate the Mining Code. The person requesting the exploration permit must pay an exploration fee simultaneously with the filing of the application. The fee is reimbursed (totally or partially) if the permit is denied or granted for a smaller area. The mining authority automatically denies the request if the solicitor does not submit evidence of payment of the fee. Currently, for first-category and second-category minerals (gold, silver, copper, lithium, salt, etc.) the exploration fee is ARS\$1,600 per unit (500 hectares), regardless of the term of the permit. The boundaries of exploration areas must have north-south and east-west orientation.

The provincial or the Federal Mining Authority (“Authority”) is in charge of: (i) registering the permit; (ii) notifying the owner of the land; and (iii) publishing an official notice in the Official Gazette of the place where the permit is requested. Anyone who claims to have a right to the land to be explored must come forward within 20 days following the publication. If there is no opposition, the Authority will grant the permit immediately, and from the filing date, all discoveries, even those made by third parties, shall belong to the permit holder.

## **2. Concession of Mines**

Although the Federal Government and the provinces are the owners of the mineral deposits located within their territories, only private parties with exploitation concessions may exploit the minerals. Any company holding an exploration permit that discovers minerals must file a written request (declaration of discovery) with a sample of the minerals found. The Authority is bound to grant an exploitation concession to the discoverer.

The concession grants its holder a perpetual property right to the mine it has discovered. But the right is subject to three conditions: (a) payment of an annual fee; (b) investment of a minimum amount; and (c) actual performance of mining activities within the area covered by the concession (if a mine is inactive for more than 4 years the Authority may demand its reactivation and eventually revoke the concession if the reactivation plan is not filed or fulfilled). If the holder of the concession does not comply, the concession is forfeited. In the case of first-category minerals disseminated deposits, the annual fee per unit is ARS\$3,200; for second-category minerals, the annual fee per unit is ARS\$160.

Mines may be sold, leased or otherwise transferred in the same way that real property is sold, leased or transferred.

### **3. Mining Modernization Law**

In June 1995, the government issued the Mining Modernization Law. Among other innovations, this Law (i) has eliminated the prior large-scale mining regime; (ii) establishes that private parties may cover with granted exploration permits up to 200,000 hectares in each province; (iii) regulates geological investigation using aircrafts; and (iv) has reduced the areas reserved for exclusive mining and geological investigation by the Provincial or Federal Governments (from 200,000 to 100,000 hectares) and the term of those investigations (from four to two years). Under the current regime, private companies may carry out mining projects in areas of a size comparable to that established in the former large-scale mining regime without being forced to enter into any kind of joint venture with the Federal Government, and are entitled to a legal rather than an administrative concession.

### **4. Mining Investment Law**

Mining Investment Law No. 24,196 (“Mining Investment Law”) was issued in April 1993, replacing the old mining promotional regime (1979) and granting certain tax advantages for federal, provincial and municipal taxes. This has been adhered to by most provinces. Below is a summary of its benefits.

#### **1. Tax stability**

Any company qualified under the Mining Investment Law enjoys “tax stability” for 30 years from the date of filing of the feasibility study. This 30-year tax stability covers every federal, provincial and municipal tax that may be levied on the mining activities carried out by the companies registered under the Mining Investment Law, except VAT. Any increase in the tax rates or new taxes that may lead to an increase in the

thorough tax liability will not apply to companies operating under the Mining Investment Law. The stability shall also apply to the exchange control and customs duties, excluding the refund of taxes related to exportations.

## 2. Repatriation of Exports' Profits

In October 2011, the Executive Branch enacted Executive Order No. 1722/2011, which overruled the differentiated regime established for mining activities set forth by Executive Order No. 417/2003 that exempt mining companies from the obligation to enter into the Free Exchange Market when the export proceeds. Therefore, the full value (i.e., 100%) of the exports of mining products shall have to be entered into the Free Exchange Market.

The validity of Executive Order No. 1722/2011 could be questioned since it is in violation of the regime established in the Mining Investment Law. Under the Mining Investments Law, companies qualified under that law are exempted from repatriating profits from export transactions with respect to a new mining project as well as the broadening of production units already in existence. However, no court ruling on the invalidity of Executive Order No. 1722/2011 has been issued yet (December 2016).

## 3. Registration

To qualify for the benefits of the Mining Investment Law, the company carrying out the exploration or exploitation activities must be registered with the Federal Mining Authority. In addition, to enjoy tax stability, interested parties must file additional documents related to the feasibility study.

## 4. Income tax

Income tax applies, on a worldwide basis, to the income of individuals or companies residing or doing business in

Argentina. The Mining Investments Law sets forth the following additional benefits:

- **Double deduction:** If a company is registered as a mining investor, to calculate its income tax, the amounts invested in prospecting, exploration and any other expenses necessary to determine the feasibility of the project that are incurred before the filing of the feasibility study will enjoy a double deductibility. The exploration fee and exploitation fee are not included in the benefit. Moreover, in the case of new projects or the expansion of existing ones, the deductions may be made in the fiscal year in which the startup of the productive process takes place.
- **Accelerated depreciation:** An accelerated depreciation regime is applicable to new mining projects and to the enlargement of existing ones, as well as all the capital investments made during the exploitation. In this sense, investments made in infrastructure may be depreciated by 60% during the year the investor obtains the corresponding authorization, while the remaining 40%, in equal parts in the following two fiscal years. On the other hand, investments in equipment that differs from infrastructure (e.g., machinery, vehicles, fixed assets) may be depreciated in three years.
- This depreciation regime is not mandatory; mining investors are entitled to choose between the general depreciation regime established by the Argentine income tax law and the accelerated depreciation procedure mentioned herein.
- When a company qualifies under the Mining Investment Law, the profits that its shareholders may gain from the contribution of mines or mining rights

as capital are exempt from income tax. The shareholders and the company receiving the assets may not sell them within five consecutive years as of the date the contribution is made. However, under certain circumstances, the Mining Authority may authorize the sale of those assets.

- Investors may capitalize on up to 50% of the assessment of economically exploitable mining reserves certified by an authorized professional. The balance may be recorded as an accounting reserve. The capital and accounting reserves will have accounting effects but will not be taken into account in determining the income tax that the company may owe.

## 5. Import Duties

Any company registered under the Mining Investment Law regime may import into Argentina capital goods, equipment and spare parts to be used in the performance of mining activities without having to pay any import tax (0–35%), statistics duty (0.5%), or any special import tax. Companies not registered under the Mining Investment Law regime may also benefit from the aforementioned exemptions as long as the capital goods, equipment or spare parts imported are leased to persons or companies registered under such regime.

## 6. Royalties

Any province adhering to the Mining Investment Law may charge a maximum of 3% royalty on the “mine head” (*boca de mina*) value of extracted minerals.

## 7. VAT for exploration activities in mining projects

The Mining Investment Law provides that tax credits from the import of certain goods and services, as specifically

determined by the applicable Authority – and which are intended for prospecting, exploring, mineralogical tests or applied research – by companies that perform mining exploration activities and that are registered under the Mining Investment Law shall be refunded to such companies in accordance with the terms and conditions that the National Executive Power will rule.

The aforementioned refund must proceed as long as after a 12-month taxable period as of the fiscal year in which it should be computed, such tax credits comprise the taxpayer's credit balance in line with the Value-Added Tax Law provisions, and provided that such tax credits are financed under the provisions of Law No. 24,402.

Law No. 24,402 sets forth a financial regime for value-added tax that is levied on: (i) the purchase or definitive destination imports of new capital assets; and (ii) the investment in physical (tangible, buildings, equipment) infrastructure for mining activities.

The beneficiaries of the aforementioned financial regime shall be: (a) the buyers or importers of new capital assets as long as they are applied to the productive process focusing on sales to the outward market; and (b) the companies subject to the Mining Investment Law regime that make investments in building and construction activities in order to provide the necessary infrastructure for export goods.

## **5. Federal Mining Agreement**

As practically most of the mineral resources belong to the provinces, on May 6, 1993, all Argentine provinces executed an agreement with the Federal Government to unify the mining policy and procedures throughout the country. Most of the provinces have ratified this agreement in their own

legislation. The most important principles of this agreement are the following:

- a. No law or regulation enacted by the Federal Government, the provinces or the municipalities will prevail over tax exemptions granted to mining activities.
- b. Each province will have full competence to call for bids to explore and develop, on a large scale, the mineral reserves located within its territory.
- c. State-owned companies will not have privileges over privately owned companies in carrying out mining exploration and development activities.
- d. The provinces will foster the abrogation of municipal taxes and duties, which may burden mining activities.
- e. The provinces will eliminate the stamp tax on documents related to prospecting, exploration, development and processing of minerals.
- f. The Federal and Provincial Governments will do what is necessary to avoid distortions in electricity, gas, fuel and transportation tariffs that may affect the mining activity.
- g. Companies that protect the environment while carrying out their mining activities shall receive further incentives.

## **6. New Federal Mining Agreement**

On 9 February 2017, the National Government and the governments of the Argentine mining Provinces signed the New Federal Mining Agreement (the “New Mining

Agreement”) which will enter into force once it is approved by the National Congress and the Provincial Congresses. The Agreement introduced the following main amendments:

- a. Creates an additional contribution of 1% over the total amount of gross revenues accrued in a year, through the commercialization of mineral substances (without deduction other than VAT). These funds will be administered by the National Mining Secretary.
- b. Authorizes the Provinces to charge an additional contribution of up to 1.5% on the total amount of the gross revenues accrued in a year (without deduction of any amount other than VAT) for the commercialization of mineral substances. That amount shall be contributed to public infrastructure funds to be created by the Provinces.
- c. Establishes that royalties must not exceed 3% of the total amount of gross revenues accrued (excluding VAT) and without deduction of any amount. This entails an increase of the taxable base, as the taxable base was previously the “mine head” (*boca de mina*) (production minus certain expenses).
- d. Creates a consultative team in environmental mining management to provide assistance and advice to the Provinces, including issues related to the closure of mines.
- e. Promotes the employment of local labor and local suppliers, as well as the unification of geological information, through the creation of the National Mining Information Center, and a unified registry and cadaster.

- f. Forces companies to constitute specific funds or guarantees destined for the conservation and remediation of the environment. The Provinces shall regulate the creation of such funds.
- g. The canon will be fixed for a maximum term of two years and will be increased by progressive scales while the mine does not register activity. Once the activity is started, the canon will be fixed based on the last scale.
- h. In case of expiration or abandonment of a mine, for justified reasons, the Provinces may offer the rights derived thereof to private individuals or entities by a bidding process. This must be done within a year of such declaration. With the previous regime, these rights were assigned to the first one that requested them.
- i. Material breaches to the environmental regulations of the Mining Code are included as causes for expiration of mining rights.

## **U. Oil & Gas**

### **1. Legal Framework**

Exploration, exploitation, production, transportation and commercialization of oil and gas in Argentina are mainly regulated by Law Nos. 17,319 as amended by Law 27,007 (“Hydrocarbon Law”), 24,076, 21,788, 24,145, and 26,741 as amended by different executive orders and resolutions.

Although the National State establishes the guidelines for the exploration and exploitation of oil and gas reserves, the provinces are also entitled to pass regulations concerning

provincial issues related to exploration and exploitation activities (e.g., environmental matters).

The latest development occurred on October 31, 2014 when Law No. 27,007 was published in the Official Gazette on October 31, 2014, introducing major changes to the regulatory framework aimed at promoting the development of Argentina's unconventional potential ("New Regime"). Some of those changes include: (i) less relinquishment obligations; (ii) possibility to hold areas for more years and unlimited term extensions; (iii) current holders of areas can access non conventional concessions without public bids; (iv) limit to the royalties to be paid; (v) the Provinces and the National Government shall not be entitled to reserve vacant areas in favor of National or Provincial Owned Companies; (vi) elimination of the "carry" provision included mostly in agreements between Provincial Owned Companies and E&P Companies during the "development" stage; (vii) offshore areas assigned to ENARSA (National Owned Company) in 2004 shall revert to the National Secretary of Energy, who shall grant permits and concessions according to the new regime; (viii) royalty reduction under certain circumstances; (ix) standard terms and conditions at National and Provincial level; etc.

## **2. Property of Hydrocarbons**

Ownership of oil and gas reserves depends on their location; the National State and the provinces are the owners of the hydrocarbons located within their territories.

In addition, the provinces own the oil and gas reserves existing in their offshore areas up to 12 nautical miles from the coastline. From that limit, the hydrocarbons located in the Argentine continental platform belong to the National State.

The Hydrocarbons Law establishes public bidding procedures as the system to award E&P rights. The New Regime that amended the Hydrocarbons Law indicates that vacant areas shall be offered to private parties through public bids based on uniform bidding terms that the Provincial and National authorities should draft within 6 months as from the effective date of the New Regime. Such uniform bidding terms have not been issued yet.

### **3. Exploration Permits and Exploitation Concessions**

Hydrocarbon Law establishes no limitations on the nationality of the owners of exploration permits or exploitation concessions; nevertheless, any applicant must register a domicile in Argentina, have the required technical and financial capabilities, and fulfill any other condition set forth in the corresponding bidding documents.

Currently, the provinces and the National State are entitled to grant hydrocarbons rights (exploration permits and exploitation concessions) through a bidding process to any individual or entity fulfilling the abovementioned conditions.

#### *(i) Exploration Permits*

Under an exploration permit its holder is entitled to explore, construct the required infrastructure and have a preference to exploit the area if a commercial discovery is achieved. The exploration terms will be determined in each bidding taking into consideration the exploration target with the following maximums for the Basic Period:

- Conventional Exploration Target:
  - 1st stage, up to 3 years

- 2nd stage, up to 3 years
- Unconventional Exploration Target:
  - 1st stage, up to 4 years.
  - 2nd stage, up to 4 years.

For conventional exploration on the Territorial Sea and Continental Platform (offshore)<sup>7</sup>, each stage of the Basic Period may be increased up to 1 year. Extension Term for conventional and non conventional exploitation: up to 5 years

(ii) *Exploitation Concession*

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. Permit holders and concessionaires have the right to request and non conventional exploitation concession either by (i) declaring a commercial discovery, (ii) converting their current conventional exploitation concession, or (iii) by merging a non conventional concession with an adjacent conventional concession.

- Exploitation concession term:
  - Conventional Exploitation: 25 years.
  - Unconventional Exploitation: 35 years.

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<sup>7</sup> The Continental Platform reaches up to 200 nautical miles and is under the jurisdiction of the National Government except for the Territorial Sea that reaches up to 12 nautical miles from the shore and is under the jurisdiction of the Provinces.

- Exploitation in the Continental Platform and Territorial Sea: 30 years.
- Extension: The holders of exploitation concessions can request indefinite 10-year extensions provided they comply with their obligations as concessionaires and with the requirements indicated in the Hydrocarbons Law.

For environmental issues related to hydrocarbons exploration and exploitation, please see **Section S, 2(f)**, above.

#### **4. Royalties**

Concessionaires shall pay 12% royalty on their production of liquid hydrocarbons and natural gas. That royalty may be reduced to 5%, considering productivity, condition and location of the wells.

In case of term extensions, the additional royalty shall be of up to 3% applicable to the first term extension, and up to 18% for the following extensions. Royalties are calculated on the value of the hydrocarbons “at the well” as determined monthly by permit holder or concessionaire less the corresponding transportation costs. The enforcement authority will be able to challenge it if it considers that such value does not reflect the real market value.

#### **5. Restrictions to Operate**

There are certain restrictions and sanctions indicated in Law No. 26,659 as amended by Law. No. 26,915 (“Law”), applicable to whoever performs oil & gas activities in the Argentine offshore Continental Platform, without the authorization of the Argentine Government. The Law includes economic and criminal sanctions.

In practice, the only area of that Continental Platform where companies may operate without the permit of the Argentine Government is the “Malvinas” or Falkland Islands area (“Malvinas Area”) as there is a current sovereignty issue over such islands between Argentina and the United Kingdom. The Law does not refer to the Malvinas Area specifically, but the intention is to sanction companies operating there.

In recent years, Argentina has sued foreign companies in local Courts for breaching the Law due to their activities in the Malvinas Area. Although such actions have not produced practical consequences yet, the involved companies might face potential risks that could be reduced by structuring or restructuring operations.

## **V. Distribution Agreements**

### **1. Dealer Legislation**

In October 2014, Law 26,994 was enacted approving the New Argentine Civil and Commercial Code (the “New Code”). The New Code rules as from August 2015. The New Code regulates the distribution agreement by remitting to the rules that may be applicable in relation to another agreement the “concession agreement”. As concession and distribution are two different agreements, not all the rules of concession result applicable to distribution. In this sense, (i) some aspects of the distribution agreements remain unregulated and can be freely agreed by the parties; and (ii) the application of some concession rules may be debatable in key issues such as the term of the agreement and compensation in case of termination.

### **2. Terms**

As previously indicated, it is debatable whether the four-year minimum term as well as other provisions of the concession

agreement would be applicable to the distribution agreement under the New Code.

### **3. Defense of Competition Law**

Argentine antitrust laws, as currently applied, do not prohibit, in principle, the principal from granting exclusive distributorship appointments. Similarly, a distributor may be contractually restricted from marketing competitive products and its activities may be limited to certain geographical areas. However, in order to avoid potential problems with the authorities, these restrictions must be analyzed on a case-by-case basis.

## **W. Competition / antitrust laws. Previous notice to the authority**

### **1. Introduction**

Defense of Competition Law No. 25,156 (the “Law”) enacted on 20 September 1999, sets up a merger control regime for the first time in Argentine law. After the amendment of the Law by Law 26,993, the Secretary of Commerce, advised by the Competition Defense Commission (the “Commission”), is the agency in charge of enforcing such merger control regime. Therefore, when we make reference to the Commission, it must be understood that we are making reference to both administrative agencies.

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

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

A draft bill, introducing major changes to the Competition Law is currently with Congress and is expected to be passed during the first half of 2018.

## 2. Merger Control

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

- i. Definition of Merger

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

control of, or a significant influence on, the adoption of ordinary or extraordinary business decisions of the entity.

ii. Size of transaction

Section 8 of the Law, as amended by EO 396, establishes that any of these transactions must be reported to the authorities when the cumulative annual turnover in Argentina of the parties involved exceeds ARS200,000,000. For purposes of this calculation, the annual turnover in Argentina of the acquiring group plus the acquired company/ies must be taken into account.

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

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

1. The acquired entity;
2. The entities in which the acquired entity has, directly or indirectly: (i) more than one half of the equity, (ii) the power to exercise more than one half of the votes; (iii) the power to appoint more than one half of the members of the Supervisory Committee, the Board of Directors and any other governing body of the entity; or (iv) the right to direct the activities of the entity;

3. Any entity that enjoys any of the rights listed in **ii** with respect to any of the affected entities;
4. Any entity in which any of the entities listed in **iii** has any of the rights listed in **ii**; and
5. Any entity in which any of the entities listed in **i** through **iv** can exercise any of the rights listed in **ii**.

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

iii. Transactions Exempt from Filing Merger Notice

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

1. The acquisition of entities in which the buyer has had more than 50% of the equity;
2. The acquisition of bonds, debentures, shares without voting rights or any other debt security of the entity;
3. The acquisition of one entity by one foreign group of companies that has had no assets or shares in other Argentine entities;

4. The acquisition of liquidated companies that did not operate in Argentina during the year prior to the acquisition; and
5. EO 396, furthermore, exempts from notification those transactions which, even though they exceed the ARS200,000,000 threshold, have the following characteristics:
  - The total value of the assets being transferred in Argentina does not exceed ARS20 million;
  - The total price for the transaction in Argentina does not exceed ARS20,000,000; and
  - Further provided that the acquiring group has not entered into any other transaction in the previous 12 or 36 months, in the same market, exceeding the total amount of ARS20,000,000 or ARS60,000,000, respectively.

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

For example, in the case of the exemption mentioned in paragraph (a) above (when the buyer holds more than 50% of the equity of the acquired company), the Commission has ruled that when the sole control of the company is shared between the buyer and the seller (for example, in the case of a 60/40 joint venture with a shareholders' agreement granting veto rights over certain strategic matters to the minority

shareholder, which happens to be the seller), the acquisition of the company must be notified, even if the buyer owns more than 50% of the shares of the target company; provided that the other criteria set forth by the law are met. However, this opinion has been subsequently qualified by the Commission resulting in the need to analyze the obligation to be notified in these circumstances on a case-by-case basis.

iv. Penalties for non-compliance with notification requirements

Fines of up to ARS1,000,000 per day until the notification is made.

v. Period of time within which to file the Notification

The notification to the authorities must be filed:

1. Before the merger is executed;
2. Within one week from the date the agreement is executed;
3. Within one week from the date of publication of the purchase offer; or
4. Within one week from the date of acquisition of a controlling participation, whichever occurs first.

EO 89 has clarified the law on the issue of when the one-week filing period starts running. In the case of the acquisition of shares in a company, one week starts to run as of the date when the acquisition of the

ownership rights over the shares becomes effective, per the relevant document (in fact, when the transfer of the shares is notified to the target company pursuant to Article 215 of the Commercial Companies Law). This means, actually, that notification may take place up to one week as from the closing of the transaction. In a consultative opinion, the Commission has established that transactions which are subject to the obligation to file may be closed before approval but that they will not have any effect between the parties or vis-à-vis third parties until approval is granted. From a practical point of view, it is difficult to determine the effects of this interpretation in the case of a transaction which has already been closed and authorisation for which is later denied. However, in controversial cases, it is advisable not to close before approval is obtained to avoid these uncertainties. It takes one year or more to obtain clearance of a transaction from the Commission due to the many questions made by the Commission that interrupt the 45-day approval period set forth in the Law.

## **X. Consumer's Protection Law**

### **1. Introduction**

*Ley de Protección al Consumidor* (Consumer's Protection Law) No. 24,240 (the "CPL") took effect on 10/15/1993 Prior to this, there was no regulation concerning consumers' protection. Implemented by Executive Order No. 1798/94, the CPL is of a public policy nature, i.e., its provisions may not be abrogated by the parties to a contract. Certain aspects of the CPL are herein highlighted. Law 26,361, that took effect in the year 2008, and Law 26,993, that took effect in the year 2014, introduced some major reforms to the CPL (the "Amendment").

The purpose of the CPL is to protect consumers or users (the “Consumers”).

The CPL defines Consumers as those individuals or legal entities that purchase for a price or obtain for free a product or service for their final consumption or their own benefit or that of their family or social group. The Amendment also extended the definition of consumer to include so called “by-standers”; i.e., people that are exposed to the injurious consequences of a consumer relationship without being a direct part of it. Those individuals or legal entities that purchase, store, use or consume goods or services or use them for production, transformation or marketing processes or for rendering services to third parties are not considered Consumers. However, and according to certain court decisions, protection has been granted to legal entities that purchase goods or services not for direct use in their production, transformation or marketing processes.

## **2. Information to the Consumer**

The CPL sets forth that all those who manufacture, import, distribute or market goods or render services must duly provide the Consumers with correct, detailed, useful and efficient information on the main features of such goods or services.

Specifically, in the case of dangerous goods or services, the CPL imposes the obligation to provide a manual written in Spanish on the use, implementation and maintenance of the good or service.

In the case of imported goods or services, the CPL establishes the obligation to provide such manual, whether these goods are dangerous or not.

Likewise, the CPL specifies that the document of sale must include the following information:

- Description of the goods
- Name and domicile of the seller, manufacturer, distributor or importer, if applicable
- Terms of the warranty
- Delivery date and terms of delivery
- Price and payment conditions, including any additional costs

### **3. Abusive and invalid provisions**

The CPL sets forth that the following provisions are invalid, notwithstanding the validity of the remaining provisions of the Contract:

- Provisions that distort or limit the liability for damages
- Provisions that imply a waiver of or restriction on Consumer's rights or an enlargement of the other party's rights
- Provisions that shift the burden of proof, to the Consumer's detriment

Pursuant to the CPL, contracts must be construed in the most favorable way for the Consumer.

## **4. Consumer's Remedies**

If the supplier of the good or service does not comply with the offer or the contract, the Consumer may opt to:

- demand the specific execution of the terms of the contract;
- accept another good or an equivalent service; and
- terminate the agreement with the right to be reimbursed for the amounts paid and claim for damages.

The consumer may also ask the administrative authorities for a direct damages award as well as for punitive damages for up to ARS5 million. Punitive damages may only be awarded by the courts.

## **5. Enforcement Authority; Investigations**

The Commerce Secretariat is the enforcement authority of the CPL at the national level. This authority has been partially delegated to provincial authorities and to the City of Buenos Aires.

Investigations may begin ex officio, or at the request of an adversely affected individual or an individual or entity acting in defense of the Consumers' general interest.

Upon the verification of an infringement of the CPL, the following sanctions may be imposed:

- A warning
- Fines ranging from ARS\$100 to ARS\$5,000,000

- Seizure of the infringing goods; closing of the store or suspension of the service related to the infringement for up to a 30-day term
- Suspension of up to five years in the State's Suppliers' Registry
- Loss of concessions, privileges, and special or financial benefits otherwise enjoyed by the infringing individual or company

## **Y. Insurance**

### **1. Control and Operation of Insurance Companies**

The operation and supervision of insurance companies are regulated by Law No. 20,091, as amended (the "Insurance Companies Law").

The performance of insurance activities may be carried out by:

- a. corporations, cooperatives and mutual insurance companies organized in the Argentine Republic;
- b. Argentine branches and agencies of foreign corporations, cooperatives and mutual insurance companies; and
- c. agencies owned by the Argentine government with or without private sector participation and organized under federal, provincial or municipal laws, provided that financial independence is guaranteed.

Prior authorization to operate is mandatory. Non-authorized companies providing insurance services are subject to fines and liquidation.

Branches and agencies of foreign companies are authorized on a reciprocity basis. The foreign company must appoint a representative with full powers to operate, appear in courts as plaintiff or defendant, and deal with the regulatory authorities (see Section 3 below).

Insurance companies may not file for reorganization proceedings or be declared bankrupt. They are subject to a similar procedure, known as the liquidation procedure, under the supervision of the *Superintendencia de Seguros de la Nación* (the “Superintendence”).

## **2. Operational Requirements**

Any entity engaged in insurance activities must fulfill the following requirements:

- a. It must be incorporated and organized in accordance with the Law.
- b. Its exclusive purpose must be the performance of insurance operations (however, the entity may also manage the assets in which its capital and reserves have been invested).
- c. Its fully paid-in capital must meet the minimum requirements set forth by the Superintendence from time to time.
- d. If a foreign company, it must file with the Superintendence its last five balance sheets.
- e. Its declared term of duration must be in accordance with the nature of the activities in which it is to engage.

- f. Its activities must be performed on the basis of those insurance plans approved by the Superintendence.
- g. It must register its articles of incorporation and bylaws with the PCR.

### **3. Application Authority**

The Superintendence is the authority in charge of granting authorization to the insurance company. Any amendments to the bylaws of any entity that is duly authorized to provide insurance services must also be approved by the Superintendence. The Superintendence is entrusted with the power to supervise, review and approve or reject plans, policies, actuarial calculations of minimum net worth required, and reserves to be maintained, etc. Its approval is also required for mergers of insurance companies, equity transfers, and portfolio assignments.

### **4. Prohibitions**

Insurance companies are forbidden:

- a. to partially own assets without prior authorization from the Superintendence;
- b. to mortgage their own real property, except as security for the unpaid balance of the purchase price of the property used for their own transactions;
- c. to issue debentures, promissory notes or bills of exchange;
- d. to negotiate customers' receivables or checks unless they are endorsed to a specific person;

- e. to pay customers by means of bills of exchange or promissory notes;
- f. to make payments by any means other than checks;
- g. to apply for bank loans, except for (i) the construction of buildings for sale or lease with prior authorization from the Superintendence, and (ii) the financing of a debt restructuring plan previously approved by the Superintendence;
- h. to make gratuitous contributions, except for charity purposes and with declared cash profits;
- i. to guarantee third parties' obligations; and
- j. to own stock in any company other than a local publicly held company or a public utility foreign publicly held company whose main purpose is carried out in the Argentine Republic.

## **5. Foreign Companies**

A foreign company must invest in its branch or agency the minimum capital required in its country of incorporation in order to operate insurance activities.

## **6. Loss of Capital**

Capital impairments of minimum amounts required must be covered in accordance with a reorganization plan approved by the Superintendence. The reorganization plan may contemplate: (a) capital contributions; (b) mergers; (c) management buyout; (d) portfolio assignment; or (e) the exclusion of specific assets and liabilities from the balance sheet of the insurance company. Capital impairments in excess of 30% of the required minimum amount will automatically

cause the company to cease operations until its capital reaches the minimum required.

## **7. Cancellation of License**

The license to operate will be cancelled in the following cases:

- a. Transactions do not commence within six months after the date of the authorization.
- b. Capital impairments are not cured.
- c. Violations of the bylaws or the specifications for approval occur.
- d. Dissolution is advisable under the regulations of the Commercial Code.
- e. The parent company of an Argentine branch is wound up or declared bankrupt, or applies for reorganization proceedings or any other similar proceedings.
- f. Liquidation occurs.

Engaging in insurance activities after cancellation of the license causes the incorporators, shareholders, directors, managers and officers of the company to be jointly and severally liable for the company's obligations.

## **8. Obligation to Insure With Argentine Companies**

Argentine law prohibits insuring abroad any kinds of interests falling within Argentine jurisdiction. Those who directly or indirectly offer insurance coverage or enter into insurance contracts without being duly authorized to do so may be subject to fines and other sanctions and penalties.

## **9. Control and Operation of Reinsurance Companies**

Reinsurance activities in the Argentine Republic are mainly governed by the Superintendence.

Any company willing to conduct reinsurance business in the Argentine Republic must first obtain the Superintendence's approval and authorization to operate.

The performance or reinsurance activities in the Argentine Republic may be carried out by:

- a. corporations, cooperatives and mutual companies organized in the Argentine Republic;
- b. Argentine branches of foreign reinsurance companies or groups operating in their respective countries; and
- c. Argentine insurance corporations, cooperatives and mutual funds, branches or offices of foreign companies, and governmental or quasi-governmental entities and agencies, whether at the national, provincial or municipal level, in the same areas for which authorization to conduct direct insurance business is granted.

The Superintendence shall grant the authorization to operate as a local reinsurance company if: (i) the applicant company is created in accordance with Argentine law; (ii) its exclusive purpose is to engage in reinsurance activities; (iii) it complies with the minimum capital requirement set by the Superintendence; (iv) should the applicant be an Argentine branch or office of a foreign company, if it files the balance sheets for the last five fiscal years and registers itself with the Public Registry of Commerce; (v) it complies with all rules and provisions applicable to the plans and coverage; and (vi)

its term of duration is consistent with the reinsurance activities to be conducted.

Once authorization is granted, the Superintendence shall register the authorized entity with the Registry of Reinsurance Companies.

As an exemption to the general regime, the Superintendence may allow those entities who are authorized to perform insurance activities in Argentina to enter into reinsurance treaties with foreign reinsurers who are authorized to conduct businesses from their headquarters and are registered with the Superintendence, when due to the magnitude and nature of the risks to be ceded the reinsurance coverage may not be granted in the local reinsurance market.

Moreover, when an individual local risk exceeds a certain amount and there is no capacity in the local reinsurance market, such exceeding amount may be reinsured with foreign reinsurers authorized to conduct businesses from their headquarters by the Superintendence and provided such foreign entity is duly registered with the Superintendence.

## **Z. Telecommunications**

### **1. Regulatory Framework**

Telecommunications in the Argentine Republic are basically regulated by National Telecommunications Law No. 19,798 of 1972, Executive Order No. 62/90, No. 1185/90, and No. 764/2000, Law No. 27,078 (*“Argentina Digital”*), Executive Order No. 678/16 and several resolutions issued by the regulatory authorities from time to time.

## **2. Telecommunications Services**

### **1. Licensing**

Licensing regulations are applicable to all individuals and legal entities interested in providing telecommunications services to third parties. Licenses are granted only by application and after completion of certain technical, legal and commercial requirements.

### **2. Interconnection**

Interconnection regulations set forth the principles and regulatory provisions that shall govern interconnection agreements among providers. Such principles include rules governing the right to apply for and the obligation to grant interconnection. Its aim is to ensure interconnection and interoperability of the telecommunications networks and services for the benefit of end users, basing interconnection on the principles of costs-orientation, transparency, equality, reciprocity and nondiscrimination.

### **3. Universal Service**

Universal service regulations create a Trust Fund to be formed by the operators' periodical contribution of a percentage of their incomes.

### **4. Radio-electric Spectrum**

The radio-electric spectrum is a limited natural resource to be administered by the regulatory authority of the Federal Government, which shall be empowered to grant, modify or cancel the corresponding use authorizations of the spectrum. The applicable regulations establish a procedure in order to obtain the authorization to use frequencies.

### **3. Audiovisual Services**

Audiovisual services include broadcasting services as well as content (producers, signals and TV channels).

Law No. 26,522 have been mainly amended by Law No. 27,078 and Executive Order No. 678/16.

## **AA. Public Contracting**

### **1. Legal Framework**

The Argentine Republic has a federalist government system: the country is divided into several provinces and the Autonomous City of Buenos Aires, which all have the power to approve their own constitutions and legislate, within their territories, on matters not delegated to the National Government. At the same time, the provinces have also granted certain specific powers to municipalities. Provinces, the Autonomous City of Buenos Aires and municipalities establish their own public procurement regulations. However, they are usually similar to those established at the national level.

As a general rule, the following legislation (jointly, the “Public Procurement Regime”) applies, at the national level, to all procurement procedures:

- (i) “Contracting Regime for the National Public Administration” (*Régimen de Contrataciones de la Administración Pública Nacional*), approved by Executive Order No. 1023/2001;
- (ii) “Rules of the Contracting Regime for the National Public Administration” (*Reglamento del Régimen de*

*Contrataciones de la Administración Pública Nacional*), approved by Executive Order No. 1030/2016; and

(iii) the General Terms and Conditions, approved by National Contracting Office's Disposition No. 63/2016.

Besides, a particular governmental contract is also regulated by specific and *ad hoc* rules, namely:

(iv) the Specific Terms and Conditions;

(v) the winning bidder's offer;

(vi) the governmental decision awarding the contract (*adjudicación*); and

(vii) the terms of the contract or the purchase order.

In addition, the National Buy Regime (Law No. 25,551) applies to all public contracting procedures, and obliges specific authorities and entities to, under certain conditions, grant preference to the acquisition or hiring of national goods and services.

The Public Procurement Regime applies, as a general rule, to all types of contracts. However, there is specific legislation for certain contracts, such as concession agreements (Law No. 17,520), public-private partnerships (Law No. 27,328) and contracts for the construction of public works and infrastructure (Law No. 13,064).

The Public Procurement Regime applies to the centralized and decentralized National Public Administration –*i.e.*, the Executive Power, Ministries, Secretariats, and other lower rank offices, and regulatory agencies and other governmental entities–. It does not apply, in principle, to state-owned companies –unless it is expressly stated in their bylaws or

other specific legislation–, non-state public entities, state trust funds, and any other agencies which is not included in the centralized or decentralized National Public Administration.

## **2. Procurement Procedures**

All contracts, as a general rule, must be the result or consequence of a previous public bid, *i.e.*, a call for tenders open to the public. However, other procurement procedures, such as private bids and even direct contracting, can be exceptionally implemented under specific circumstances expressly regulated (*e.g.*, amount of the purchase, urgency, existence of a single provider, etc.).

Foreign legal entities may contract with the Public Administration if they comply with applicable rules and requirements set forth by the Public Procurement Regime. International tenders allow the participation of bidders that have their principal place of business located abroad or do not have branch registered in Argentina. Bidders can also use different associative contracts (usually, joint ventures or cooperation consortiums), which have the advantage of integrating the know-how and technical and financial capabilities of all of its members. The existence of this associative contract may be proved together with the submission of the bid or even in a subsequent stage, signing a commitment to execute it in case the award is finally issued.

Foreign legal entities that do not have a local presence in Argentina are not required to be registered at the Public Administration’s providers database known as Suppliers’ Information System (“SIPRO”; *Sistema de Información de Proveedores*), but only “pre-registered” at it –this is, they must have uploaded their information to SIPRO without having to submit any documents to it–. However, some exceptions may apply exempting them from “pre-registering” also.

Foreign legal entities that do not have a local presence in Argentina shall file documentation referred to the registration of the company abroad, tax information, and documentation to prove the powers of its representatives. Each document needs to be translated, notarized and apostilled.

### **3. Contractual Performance**

Both parties have the rights and duties agreed upon under the specific contract. Additionally, the contracting authority has the powers to (i) unilaterally increase or decrease up to 20% the total amount of the contract; (ii) revoke, amend or replace the contract for reasons of convenience; (iii) control and supervise the contract performance; and (iv) impose penalties.

The private party is required to perform the contract by itself and under all circumstances, even if the contracting authority breaches its own obligations, unless performance becomes impossible. It also has the right to be compensated for any disruptions of the economics of the contract so that they remain the same as of the moment of execution. Conventional limitation of liability is not allowed in administrative contracts.

### **4. Dispute Resolution Methods**

At the national level, as a general rule, judicial disputes regarding public procurements must be heard by the federal courts having jurisdiction over administrative law matters, unless the contract is not a typical administrative contract, in which case the federal civil and commercial courts would have jurisdiction over the matter.

At the provincial level, these kind of disputes are usually heard by courts having jurisdiction over administrative law matters.

An arbitration clause, usually agreed to in contracts between private parties, has specific characteristics in public contracts. In this regard, it will be valid to submit the controversy to arbitration only if a legal rule allows it.

## **BB. Dispute Resolution**

### **1. Legal Framework**

Since the Argentine Republic has a federalist government system, there is a Federal Judiciary and also a provincial judiciary for each of the several provinces and the Autonomous City of Buenos Aires. The head of the Federal Judiciary is the Supreme Court of Justice. The intervention of the Supreme Court of Justice is only reserved to exceptional federal cases. The Supreme Court might deny certiorari at its sole discretion and without expressing cause.

The lower federal courts usually comprise a first instance court and a chamber of appeals (in some matters, a Court of Cassation could also intervene). They are also separated in several territorial districts across the country and according to their subject matters (*e.g.*, criminal courts, civil and commercial courts, administrative litigation courts). Provincial judiciaries tend to follow a similar pattern.

Federal subject matter jurisdiction cannot be waived, but when applicable parties may waive territorial jurisdiction in favor of another federal court.

### **2. Main Guidelines and Rules**

Before filing for a lawsuit, there is a mandatory mediation procedure that must previously take place; in case it does not lead to a settlement, parties may then file the complaint.

Procedural rules allow the plaintiff or the defendant to request in Court preliminary measures to obtain information indispensable to the complaint or to secure evidence that could be destroyed or misplaced before trial. In contrast to discovery, preliminary measures cannot be conducted privately by the parties themselves, like in discovery. Therefore, a party is not obligated to answer a request for information not made or ruled by the court.

Upon filing the claim, the plaintiff must pay a court tax (3% of the amount claimed). The court tax may be recovered from the defendant if the plaintiff succeeds in the lawsuit and the court orders the losing party to bear the legal fees and costs (the latter is the rule under Procedural Rules).

The complaint must be filed with the court and it must contain, as a general rule, all documents and include all the non-documentary evidence to be produced on which the plaintiff grounds the petition. Documents in foreign languages must be translated into Spanish by an Argentine certified translator.

Foreign plaintiffs non-domiciled in Argentina may be requested to post a foreign plaintiff litigation bond. Under certain international treaties signed by Argentina, residents of various foreign countries are exempted of it.

When foreign companies are being sued in Argentina, they should be served notice of the complaint, in principle, in their corporate domicile. Therefore, the intervening judge should issue rogatory letters for that purpose. Usually, the service of the complaint is conducted according to the provisions of the Hague Conventions, especially the one of 15 November 1965 about Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Parties may also agree to choice of law and arbitration clauses unless they violate public policy. In case the arbitral tribunal

issues a favorable award, the awardee must initiate a judicial procedure to enforce it in local courts.



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