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BAKER & MCKENZIE

Doing Business in Argentina



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Doing Business in Argentina

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A. Foreign Investment Law

Foreign investors enjoy the same rights and undertake 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. They are not subject to prior government approval beyond those applicable to any domestic or foreign investor in each activity.

The *Ley de Inversiones Extranjeras* (Foreign Investment Law) (hereinafter referred to as the “FIL”) (Law No. 21,382/76) was amended several times for the purpose of liberalizing and deregulating the said investments. It was recently amended by Law No. 23,697 and Executive Order No. 1,853/93.

The FIL sets forth that foreign investors shall be treated as local investors, provided they invest in productive activities. (i.e., industrial, mining, agricultural, commercial, service or financial activities, or any other activities related to the production or exchange of goods or services.)

Investments may be made in: (i) foreign currency; (ii) capital assets, (iii) profits from other investments; (iii) repatriable capital resulting from other investments made in the country; (iv) capitalization of foreign credits; (v) certain intangible assets; and (vi) other forms acceptable to the foreign investment authorities or contemplated by special legislation.

B. Transfer of Technology or Know How Transfer

1. Scope of the *Ley de Transferencia de Tecnología* (“Transfer of Technology Law”)

The *Ley de Transferencia de Tecnología* No. 22,426 (hereinafter referred to as the “Transfer of Technology Law”) was amended on September 8, 1993 by Executive Order No. 1853/93, and governs agreements that provide for the transfer, assignment or license 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 the rendering of a service.

2. Agreements between Related Parties

Before Executive Order No. 1,853/93 came in full force and effect, the Transfer of Technology Law provided that all license agreements executed by a domestic licensee and a foreign licensor controlling the former, either directly or indirectly, had to be previously approved by, and registered with, the *Instituto Nacional de la Propiedad Industrial* (National Institute of Industrial Property) (the “INPI”) to obtain certain tax advantages. The INPI’s approval is no longer required, but failure to register an agreement therewith still has adverse tax consequences.

A License Agreement between related parties has to be approved and registered only if the INPI determined that its terms and conditions were in accordance with “regular or usual market practices between unrelated parties.” Although INPI’s approval is no longer required, it is still necessary that the terms and conditions of a License Agreement comply with “regular or usual market practices between unrelated parties.” In any case, the consideration must be supported by a Transfer Pricing Study.

Currently, transfer of technology agreements entered into between related parties are registered by INPI for statistical and tax purposes.

3. Agreements between Unrelated Parties

An agreement between unrelated parties is automatically registered with the INPI only for statistical and tax purposes. No specific conditions are established for them. However, the INPI has sometimes rejected the registration of certain agreements based on the fact that the actual purpose of the agreement does not amount to a transfer of technology.

4. Tax Treatment of Payments

Generally speaking, payments to foreign beneficiaries arising from know-how transfer, technical assistance, patents or trademark license agreements are considered as Argentine source income, and are subject to Argentine taxation. The applicable rates may vary depending on whether the agreement is registered with the INPI or not, 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, should the agreement not be registered, the licensee could not deduct the amount paid to the licensor for income tax purposes. Moreover, all payments made to the licensor deriving from an agreement not registered with the INPI shall be subject to a 31.5% income tax withholding. Furthermore, registered agreements shall be subject to a tax 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 might 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

1. Patents and Utility Models

Patents and Utility Models are at present governed and protected by Law No. 24,481 as amended by Laws No. 24,572 and No. 25.859 and by its Regulatory Executive Order No. 260/96

Executive Order No. 260/96 consists of three Exhibits: Exhibit I that reframes Patent Law No. 24,481, as amended by Law No. 24,572; Exhibit II that regulates the above mentioned Patent Law; and Exhibit III that establishes the official rate set forth by the *Oficina de Marcas y Patentes* (Trademark and Patent Office).

The salient points of this set of rules are:

- 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. Whilst absolute novelty is required, the disclosure of the invention at an exhibition or by a publication or other means of communication within one (1) year prior to the patent application date or priority date shall not affect its novelty.

- d. Patents are granted for a term of twenty (20) years from the application filing date.
- e. Patents and Utility Models are subject to annuities.
- f. Unlike old legislation, pharmaceutical products have not been excluded from protection, which became effective as from October 2000.
- g. Exclusive rights granted to the patentee consist of excluding third parties from the manufacture, use, offer to sell, sale and importation of the patent.
- h. The law provides that inventions made by an employee in the course of his/her employment contract, or during the course of his/her labour relationship shall belong to the employer provided the purpose of such contract or relationship involves inventive activities, either partially or totally.
- i. After the expiration of the term of three (3) years after the grant of the patent, or of four (4) years from the filing of the application, any person is entitled to request from the INPI an authorization to use the invention without the patentee's authorization (compulsory licenses) if it has never been used, or if its use has been interrupted for more than one (1) year, except in case of force majeure or lack of effective preliminary steps for using the patented invention.
- j. The Law grants a 10-year protection term of Utility Models from the application filing date, and such term may not be extended.
- k. 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 have the infringement stopped such as “seizure, inventory and attachment of the forged objects.”

2. Industrial Models and Designs

Industrial Models and Designs are ruled by Executive Order No. 6,673/63 ratified by Law No. 16,478, and are defined as the shapes or configuration of elements given or applied to an industrial product that is substantially decorative or ornamental.

To be eligible to protection, industrial designs must comply with all ornamentation, novelty and industrial requirements and must not be forbidden by law.

The author of an industrial design and his successors are entitled to deposit it for registration purposes.

Their 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, some actions to cancel them, and civil and criminal actions for infringement of owner's rights.

3. Trademarks

Law No. 22,362 protects both trademarks and service marks.

A trademark is any distinctive mark, symbol or device affixed by a manufacturer to the goods he produces so that they may be identified in the market, provided that it involves distinctive features and is not forbidden by the law.

Ownership of a trademark and the right to its exclusive use are acquired only 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 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 that the trademark is used within the five years preceding each expiration date. The use of the trademark is required to keep the registration in full force and effect.

Prominent trademarks have been granted a special protection by law and court decisions. Section 24(b) of Law No. 22,362 establishes that trademarks are null and void when they are registered by anyone who, when applying for registration, knew or should have known that they belong to a third party.

Trademark infringement is punishable with a fine or imprisonment.

The Law also provides for 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, including expressly computer software (source and object), data compilations and other materials irrespective of their means of reproduction.

The Argentine Republic follows the Latin juridical concept of the authors' rights (*droit d'auteur*) which tends to be more individualistic than the concept of copyright. In that sense the Law expressly acknowledges the author's economic and moral rights. As far as moral rights are concerned, Sections 51, 52 and 83 refer to the authors' rights to attribution and integrity of their works. Moreover, the Law sets forth that moral rights are inalienable and unexpired in the said sections.

The provisions of the Law apply to foreign works (works first published in foreign countries, regardless of the nationality of authors), provided they correspond to countries that acknowledge copyright.

As regards software, the Law provides that persons and/or legal entities (corporations, companies, associations), the employees of which have created a computer program as a consequence of their functions, are the titleholders of the intellectual property right, and that license agreements for the use and reproduction of a computer program are considered one of the forms of exploiting intellectual property.

As a general rule, copyright endures for a term consisting of the life of the author of the work, and 70 years from the first day of January subsequent to his/her death. As to posthumous works, the lifespan of a copyright is 70 years from the first day of January subsequent to the author's death. For joint works, the said term shall become effective from the first day of January of the year following the death of the last author. For anonymous works published by legal entities, they are protected for 50 years from their publication dates. With regard to cinematographic works, copyright is protected for 50 years from the date of the last author's death. (The law considers the following individuals as authors unless otherwise agreed: the scriptwriter, producer, director and soundtrack composer, if any). Copyrights in photographic works last for 20 years from their first publication.

The term of copyright protection on foreign works varies depending on the international treaty to which both the country of origin of the foreign work and the Argentine

Republic are parties. If there is no existing treaty between them, the applicable term will not be longer than the one granted by the country of origin. If such term was longer than the one provided by Argentine law, the latter would apply.

The Law requires that all works be registered with the “*Dirección Nacional del Derecho de Autor*” (National Copyright Office). Failure to register would warrant suspension of protection of copyright with regard to economic rights set forth by the Law until their effective registration.

Foreign works do not need to be registered in the Argentine Republic. However, to enjoy protection of Argentine law, foreign works are to 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 will 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 they have complied with the formalities of the country of publication or proof that the said country does not require any formality.

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

5. Industrial and Trade Secrets

Law No. 24,766 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 a compensation for the payment of the damages caused.

Trade secrets are also protected by the provisions of the GATT/TRIPS Agreement, approved by the Argentine Republic by Law No. 24,425, as well as by Section 156 of the Criminal Code, which sets forth penalties such as fines or special disqualifications on those who, having knowledge of a secret the disclosure of which could cause any damages, reveal it without any justification.

D. Exchange Controls

The Argentine Republic has re-established an exchange control regime in January 2002 as from the enactment of the Emergency Law No. 25,561 and certain regulations passed by the *Banco Central de la República Argentina* (Central Bank of the Argentine Republic) (the “BCRA”). In order to enforce exchange controls, the Executive Branch established a “Sole Free Exchange Market”, through which most transactions in foreign currency (e.g., exports) are to be settled.

Although the new exchange controls regime was initially very strict and applied to almost all transactions involving foreign currency, the government has progressively eased some of the original restrictions.

Transfers of funds outside the Argentine Republic are possible subject to certain BCRA’s restrictions based on the amount and purpose of the transfer. In general, transfers of dividends, earnings of corporations and payment of interest on financial loans are permitted. Repayment of principal of financial loans is restricted based on the date of the agreement, the amount and the schedule for payment. Portfolio investment transfers abroad (including loans to non-residents and purchase of real property abroad) are subject to certain restrictions and information requirements based on the schedule and amount of the transfer.

Under the new exchange control regulations, exporters of goods and related services must bring into Argentine Republic the proceeds from exports, net of payments of export financing and pre-financing made abroad, and sell the currency (usually, US Dollars) in the Sole Free Exchange Market through the Argentine banks or authorized exchange entities.

E. Foreign Trade

1. Introduction

The Argentine customs legislation is composed, basically, of the Customs Code – Law No. 22,415 (“Customs Code”), its regulatory Executive Order N°1001/82, the Treaty of Asuncion, or the MERCOSUR Treaty, and its protocols. Argentina, Brazil, Uruguay and Paraguay are parties to this Treaty, which sets forth the basis for a common market¹.

The key issue when importing goods into Argentina is the tariff classification of the underlying goods. The tariff classification will not only determine the applicable duty rate but, 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 labelling.

Mercosur countries have established a common external tariff for most of the tariff classification items of Mercosur Common Nomenclature. However, each of the parties has a significant number of exceptions to such common external tariff. Mercosur countries are now negotiating a schedule for their domestic tariffs to converge definitively with the common external tariff.

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

¹ 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.

The import duty is 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% percent. Therefore, in order to calculate the import duties payable on imported goods, it is essential to properly determine the value of the goods for customs purposes².

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.

If a person wishes to make sporadic foreign trade operations, it could request authorization for each of these operations to the Customs Service. In this case, it would not be necessary to comply with the registration before the customs service.

Even if the importations and/or exportations are performed regularly, importers and/or exporters need not register with the Customs Service if the clearance is made under, among others, the following regimes:

- Luggage
- Means of Transport
- Onboard supplies
- Diplomatic Franchises

It should be noted that in general, in order to be registered in the Importer's Registry, the individual or corporation must be registered as taxpayer before the Federal Revenue Service.

2 Argentina has signed and approved the GATT valuation code by Laws 23,311 and 24,425 fully adopting and implementing its customs valuation provisions and methodologies. Therefore, the methods for determining the customs value under Argentine law are similar to the methods used by other countries, which have implemented the GATT Valuation Code (e.g., members of the European Union). Each member of the GATT, including Argentina, has its own policies and administrative practices, with respect to the interpretation and application of the valuation provisions stated therein.

3. Definitive Imports (Clearance for home use)

Definitive importation is the most common type of importation. It involves the entry of goods into the Argentine territory on a permanent basis. When goods are imported definitively, they must comply with all tariff and non-tariff regulations and prohibitions.

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:** it is levied on the transaction value (on a CIF bases) 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):** currently amounts to 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) **V.A.T. additional payment:** 10% or 5% in the case of goods subject to reduced 10, 5% VAT rate). These rates will be increased to 20% or 10%, respectively, if the importer fails to submit the Certificate of Import Data Validation (or “CVDI”). VAT additional payment shall not be applicable when the importer is the final user of the imported goods.
- (iv) **Income Tax advance payment:** 3%: When the importer is not the final user of the imported goods, this rate will be increased to 11%. The 3% rate will be increased to 6% if the importer fails to submit the CVDI.
- (v) **1% Advance Gross Receipts Tax.**

VAT paid by the importer may be offset against its output tax arising from its commercial activity. The 3% advance of the Income Tax shall be computed for the importer’s annual Income Tax. Advances of both VAT and Income Tax shall not be applied to imports of goods intended to be used by the importer.

Both VAT additional payment and Income Tax advance payment shall not be applicable if the imported goods are fixed assets for the importer.

4. Temporary Imports³

A temporary importation involves the entry of goods into the Argentine territory to remain in the country for a limited period of time and for a specific purpose. There are basically two types of temporary importation procedures:

- (i) Goods which are to be exported in the same condition as they entered the country. Such goods must be re-exported in certain periods of time, depending on the nature of the goods;
- (ii) Goods which will undergo a process of transformation, manufacturing or repairing and be re-exported. In general, such goods must be re-exported within a 2-year term

No import duties are applicable 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 regimes mentioned above, the importer is not allowed to sell, lease, lend, or otherwise transfer the tenancy of the imported good, unless it is expressly authorized by the Customs Service.

However, under the procedure mentioned above in (ii), when part of the production process must be necessarily made by a third party, the importer might transfer the temporary imported goods subject to the prior customs service's approval. In this case, the original importer will remain liable before customs for the compliance with all obligations imposed as a condition for the granting of this regime.

In order to import the goods under definitive import procedure, the importer shall request authorization from the Customs Service (paying the applicable import duties).

3 There are other customs temporary regimes, such as temporary export, customs warehousing procedure, In-Transit Goods.

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

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

If the temporary import status expires without exporting the goods or without requesting the authorization from Customs to place the goods under definitive import procedure, the importer will incur in the infringement laid down in article 970 of the Customs Code (failure to comply with the obligations imposed as a condition for the granting of the temporary importation regime). In such a case, the importer will have to pay the import duties and applicable taxes, if any, and a penalty equal to the higher of (i) 1 to 5 times the import duties and applicable taxes, or (ii) 30% of the custom value of the imported goods. Penalties for misrepresentation may apply.

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

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

5. “Aduana en Factoría”

Executive Order 688/02 sets out the “*Aduana en Factoría*” regime for industrial factories established within the Argentine territory. Such regime provides for the importation of raw materials, parts, components, auxiliary materials, packaging and protection materials, containers, which are directly used in the productive process and/or transformation of goods for their subsequent exportation or definitive importation. The above mentioned goods should be placed under customs warehousing procedure in the terms set forth in the Customs Code, considering that in all cases, the verification of the goods by the Customs Service has taken place. Therefore, import duties and statistics fees are not applicable. Yet, certain minor service fees may apply.

Under this procedure, the imported goods may be transformed or may remain in their original shape.

Although imported goods under this procedure shall be placed in a customs warehouse, in some cases, the authorization to operate such warehouse may not be required.

The importer is allowed to transfer the tenancy of the imported goods when a third party must necessarily make the production process. However, the importer will remain liable before customs for the compliance with all the obligations imposed as a condition for the granting of this regime.

The importers will have to comply with their tax, customs and social security obligations and provide a guarantee to secure the payment of duties and/or penalties that may apply.

The provisional customs clearance under “*Aduana en Factoría*” regime will conclude with (i) definitive export of previously transformed imported goods; (ii) definitive export of imported goods which were not subject to transformation; or (iii) definitive importation. The importers must request the placement of the goods under the above mentioned customs procedure within one year of the arrival of the goods, paying the corresponding applicable duties.

Executive Order 688/02 states that the importers may offset the VAT paid upon definitive importation made through the “*Aduana en Factoría*” procedure with free available VAT credits.

The “*Aduana en Factoría*” regime will enter into force upon agreement of the Secretariat of Industry and Commerce and the pertinent industrial sector.

Such agreement will include certain productive and employment requirements and the use of local components in the manufacturing of the final product.

The Secretariat of Commerce and Industry may limit definitive importations (clearance for home use).

6. Dumping

Anti-dumping process is regulated by Law No. 24,425 and its Regulatory Executive Order No. 1,088/01. Anti-dumping provisions therein are consistent with the outlines set forth by GATT’s Uruguay Round. The Ministry of Economy shall take the final decision on the application of antidumping rights.

7. Exports

In general, exports are subject to export duties varying from five per cent (5%) (manufactures) to twenty per cent (20%) (commodities) of the FOB value of the pertinent goods (oil and certain derivatives from petrol may be subject to higher export duties). Resolutions 11/02 and 35/02 from the Ministry of Economy established additional export duties of 20%, 10% and 5% to certain goods. Such additional duties will be added to the existent export duties.

Recently, the Executive Branch increased the applicable export duties for certain goods (e.g., meat products classified in specific tariff classification numbers). Afterwards, it decided to suspend the exportation of some of the goods which were subject to the export duty increase for 180 days (i.e. meat products classified in specific tariff classification numbers).

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. Foreign currency must be sold by the exporter in the free single exchange market.

The main measures for promoting exports are the following⁴:

a) Drawback

It is a customs regime through which taxes paid for definitive importation are totally or partially reimbursed, provided that the goods were definitively exported and that certain conditions are met.

b) Refunds (“*reintegros*”)

The refunds regime is the one in which the inland taxes paid for the goods sold for exportation, or for the services rendered related to such goods, are totally or partially refunded. The inland taxes mentioned above do not include the taxes paid upon definitive importation. The refunds regime is compatible with the Drawback regime.

⁴ Law No. 25,988 suspended until December 31, 2005, the income tax exemption on export benefits.

c) Reimbursements (“*reembolsos*”)

The Reimbursements Regime is the one in which the inland taxes as well as the taxes paid upon definitive importation of the goods sold for export, or for the services rendered related to such goods, are totally or partially refunded. Unless indicated otherwise, the Reimbursements Regime shall not co-occur with the Drawback regime or the Refund Regime.

d) Law No. 23,018 (“*Puertos Patagónicos*”)

Law No. 23,018 grants an additional reimbursement for exports made through the ports located down south the Colorado River (Patagonia Region).

e) V.A.T. refund on exports

In general, such refund does not exceed 21% of the FOB value of the exports.

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. 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.

As a customs union, the trade of goods originating in and proceeding from Mercosur countries is, except in specific cases, not subject to import duties and is exempted from the statistics fee. 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, and the producer or exporter will have to provide to the importer the prescribed Mercosur certificate of origin.

The Mercosur Origin Regime rules the requirements regarding the origin of goods. This regime establishes that goods will be considered originating in a Mercosur country where:

- a. The products are totally manufactured in a Mercosur country. They will be regarded as totally manufactured in a Mercosur country when they are produced by exclusively using materials originating in Mercosur countries;
- b. The products are manufactured with materials of third countries if they are “transformed” in a Mercosur country and the “transformation” allows that the product be classified under a Tariff Number of the NCM (4 digits) 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 above in (b) is not satisfied because the transformation process does not imply the shift of the Tariff Number, to qualify as originating in Mercosur it will be enough that the CIF port of destiny value or the CIF maritime port value of the third country components be equal to or less than 40% of the FOB value of the product. In order to determine the CIF value of third countries’ 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 as port of destination.
- d. Products resulting from a process consisting only in the assembly made in a Mercosur country, using non-Mercosur materials, when the CIF port of destiny value or the CIF maritime port value of the third country components be equal to or less than 40% of the FOB value of the product.
- e. Capital assets shall comply with the 60% value added rule.
- f. Products subject to specific origin requirements. These requirements will prevail over the general requirements mentioned above in a) to e), and shall not be required for products totally manufactured in an Mercosur country (i.e., when such products are produced by exclusively using materials originating in Mercosur countries)

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

F. Entities

Argentine law recognizes the following types of artificial persons or legal entities: branches, partnerships (general and limited), corporations and limited liability companies. Although the Companies' Law provides that a corporation may not be a partner or a quota holder in a general or limited partnership or a limited liability company, Argentine courts have ruled that foreign corporations are not subject to this limitation. Most foreign corporations organize local activities through a branch or a stock corporation, but the use of limited liability companies (which in the past had a rather negative reputation) is now becoming more common.

1. Branch of Foreign Corporation

A foreign corporation does not need to assign corporate capital to its branch unless the branch is engaged in certain specific activities (e.g., insurance, banking). The foreign corporation is liable for the obligations of the branch. The local manager of the branch may also be liable for such obligations if the branch was improperly established.

To establish a branch, a foreign corporation must appoint a local attorney-in-fact who is to apply to the "*Registro Público de Comercio*" (Public Registry of Commerce) ("PRC") for registration purposes. The PRC shall normally register the branch within three weeks, provided the application contains the following documents:

- a. certified copy of the articles of incorporation of the foreign corporation;
- b. certificate of good standing of the foreign corporation;
- c. certified copy of the by-laws of the foreign corporation;
- d. certified documentation evidencing whether the foreign corporation is or is not permitted to conduct business at the place where it was incorporated or registered;
- e. certified documentation evidencing that the foreign company meets at least one of the following conditions: (i) that it has one or more branches or permanent representations registered or incorporated outside the Argentine Republic; (ii) that 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) that

- it owns fixed assets at its place of incorporation or registration, the existence and value of which shall be evidenced pursuant to generally accepted accounting principles;
- f. certified abstract of the minutes of the board of directors' meeting that approved the establishment of the branch;
 - g. power of attorney authorizing the local attorney to register the branch;
 - h. broad power of attorney authorizing an individual (i.e., the local manager) to manage the branch.

Documents specified in (f) through (h) must be notarized. All the documents must be “legalized” either through the appropriate Argentine consulate and the Argentine Ministry of Foreign Affairs or through the “*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 “*Colegio de Traductores Públicos*” (Argentine Association of Certified Translators).

In addition, the foreign corporation should not fall under any of the following conditions: (i) it is not to own assets outside the Argentine Republic; (ii) the value of its non-current assets are not as significant as: (a) the value of the shares or interests of the foreign corporation in Argentine companies and/or the assets of the foreign corporation in the Argentine Republic; or (b) the amount of economical transactions carried out by and between the foreign corporation and Argentine residents; or (iii) the activities involving the administration and management of the foreign corporation’s affairs and businesses are effectively carried out at the place of business (corporate premises) of the foreign corporation in the Argentine Republic.

If the PRC were to evidence one of the conditions detailed above, it might require the foreign corporation to carry out the so-called “domestication” process (i.e., adapt its By-laws to the provisions set forth by the Argentine Commercial Companies, regarding Argentine companies). If the foreign corporation were not to carry out the “domestication” process, the PRC might request the court the winding-up and cancellation of the registration of its branch with the PRC.

2. Stock Corporations

A *stock corporation* (“*sociedad anónima*”) must have at least two shareholders. The PRC currently considers that a stock corporation, the corporate capital of which is owned by two shareholders, one of them holding 99.99% of the shares and the other one the remaining 0.01% of the shares, has in fact only one shareholder, and not two (the PRC has off-the-record disclosed that the second shareholder must hold at least 5% of the shares), and shall thus reject the registration of the stock corporation.

Shareholders are generally not liable for corporate debts and obligations beyond the total amount of their capital subscriptions. The board of directors of the corporation may consist of one or more directors. An absolute majority of the directors must actually be domiciled in the Argentine Republic.

All directors, whether or not domiciled in the Argentine Republic, must establish a “special domicile” within the Argentine Republic. The articles of incorporation may provide for a statutory auditor, who must be a lawyer or an accountant domiciled in the Argentine Republic. Such a statutory auditor is mandatory if the capital of the corporation exceeds the sum of \$ 2,100,000.

Currently, a corporation must have a capital of at least \$12,000. Nevertheless, according to the PRC, the corporate capital must be proportionate to the corporate purpose. The capital must be divided into nominative shares (either non-endorsable or endorsable) of equal par value. The shares may be common or preferred. All shares must be subscribed before the corporation is formally incorporated. Upon incorporation, the shareholders shall have paid in all of their contributions in kind and at least 25% of their contributions in cash. The remaining cash contributions must be paid within two years from the incorporation date.

To incorporate a stock corporation in the City of Buenos Aires, the incorporators must file its proposed articles of incorporation and by-laws with the PRC for approval and publish an abstract of the company’s by-laws in the Official Bulletin.

Each foreign shareholder of an Argentine corporation must apply for registration with the PRC. The foreign shareholder must be duly registered before filing the proposed articles of incorporation and by-laws of the stock corporation with the PRC. The PRC shall usually register the foreign shareholder within three weeks, provided the application contains the following documents:

- a. a certified copy of its articles of incorporation;
- b. a certificate of good standing;
- c. a certified copy of its by-laws;
- d. certified documentation evidencing whether the foreign corporate shareholder is or is not permitted to conduct business at the place where it was incorporated or registered;
- e. certified documentation evidencing that the foreign corporate shareholder meets at least one of the following conditions: (i) that it has one or more branches or permanent representations registered or incorporated outside the Argentine Republic; (ii) that 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) that it owns fixed assets at its place of incorporation or registration, the existence and value of which shall be evidenced pursuant to generally accepted accounting principles;
- f. a certified abstract of the minutes of the board of directors' meeting that approved its registration as a foreign corporate shareholder in the Argentine Republic; and
- g. a power of attorney issued by the foreign corporate shareholder authorizing a local attorney to register it.

Documents specified in (f) and (g) must be notarized. All the documents must be "legalized" either through the appropriate Argentine consulate and the Argentine Ministry of Foreign Affairs or through the "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 "*Colegio de Traductores Públicos*" (Argentine Association of Certified Translators).

In addition, the foreign corporate shareholder should not fall under any of the following conditions: (i) it is not to own assets outside the Argentine Republic; (ii) the value of its non current assets are not as significant as: (a) the value of the shares or interests of the foreign corporate shareholder in Argentine companies and/or the assets of the foreign corporate shareholder in the Argentine Republic;

or (b) the amount of transactions carried out by and between the foreign corporate shareholder and Argentine residents; or (iii) the foreign corporate shareholders' affairs and businesses are administered and managed effectively, carried out at the place of business (corporate premises) of the foreign corporate shareholder in the Argentine Republic.

If the PRC were to evidence one of the conditions detailed above, it might require the foreign corporate shareholder to carry out the so-called "domestication" process (i.e., adapt its By laws to the provisions set forth by the Argentine Commercial Companies, regarding Argentine companies). If the foreign corporate shareholder were not to carry out the "domestication" process, the PRC might request in court the cancellation of its registration with the PRC.

Finally, the foreign corporation shall have to file documentation to individualize its shareholders of the Company. The individualization of its shareholders must be issue within a maximum term of 30 days before the registration of the company with the PRC. Depending on the kind of outstanding shares of the foreign corporation, the individualization of its shareholders must be evidenced by means of the following documentation:

If the stock capital is represented by registered shares: a) a public deed of the Registry of Shareholders or Shares of the company, or any similar corporate book or documentation, or b) a certificate issue by an authority or officer of the company;

If the stock capital is represented by shares to bearer: a certificate including information about the shareholders who are the owners of the subscribed shares, scripts of the shares, or documentation of the company appointing agents or proxies authorized to received shares or scripts. If any agent or a proxy should be appoint subsequently to represent the shareholders, the certificate must inform that the shareholders have given notice of those appointments;

If the company is incorporated or registered in an "off-shore" jurisdiction, or in a low or null tax jurisdiction, or in a jurisdiction that does not assist in fighting against money laundering or transnational crime, the PRC should request elements to know the background of the shareholders, including those related to their property and assets;

If the stock capital is represented both by registered shares and shares to bearer, the above mentioned requirements should be applied to each kind of shares;

If shares were transferred to trusts or any other similar form of business organization, the documentation should individualize them, including the trustee, fiduciary or beneficiary, or any equivalent position according to the legal system in which they were registered. Any variation should be informed to the PRC, as we may further explain as per your request;

If the shares are owned by a foundation or any other similar institution, public or private, the founder or who has transferred those shares should be individualized. Any variation should be informed to the PRC, as we may further explain as per your request;

In the above-mentioned cases, the owners of shares quoted on the Stock Exchange, should be exempt from individualization. Although, in these cases, the individualization would be mandatory for the internal controlling group the shares of which were not quoted on the Stock Exchange.

Furthermore, the “Vehicle” Companies or instruments of investment used solely for that purpose should not individualize their shareholders; instead the direct or indirect controlling company would offer this information about their shareholders.

The information required to individualize the shareholders would be requested to register any foreign company, including unknown kinds of corporations that allows the anonymity of their shareholders.

The above-mentioned documentation must evidence at least the following information of the shareholders: a) name and surname, or corporate name, b) domicile or corporate domicile, c) ID number or incorporation or registration number, and d) quantity of shares, votes and participation percentage. This documentation should be signed by an authority or corporate officer of the company, whose signature, position, and powers must be notarized by a notary public or an administrative authority. If the Articles of Incorporation or the Restated Version of the By-laws of the foreign corporation filed with the PRC individualize the shareholders and inform about their present participation percentage, it would be sufficient to issue a certificate including that information.

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 deriving 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 a credit for similar taxes paid abroad, the amount of which may not exceed the increase of 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 bayed within Argentina are totally Argentine source of income.

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

In the scenario where these operations are entered into between related companies, the arm's length principle shall apply. This principle is defined in the income tax law as conditions adjusted to the normal practices of the market between independent entities. In order to demonstrate that the transactions are at arm's length, the taxpayer must prepare a transfer pricing study and submit it, together with information returns, to the Federal Revenue Service annually⁵. Import and/or export operations entered into between related parties shall be adjusted by the Federal Revenue Service where the prices and conditions of such transactions are not adjusted to normal practices of the market between independent entities.

⁵ The transfer pricing provisions of the Argentine income tax law generally follows the OECD guidelines for Multinational Enterprises and Tax Administrations. Please note that Transfer pricing rules are applicable not only in the case of companies which are related by means of a capital interest, but 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 with domiciled in, or constituted in accordance with, or located at low tax jurisdictions, said operations shall not be considered entered into market conditions, and thus, transfer-pricing rules will apply.

Were international prices – of public and notorious knowledge – exists for the imported and/or exported goods, that may be established through transparent markets, commercial exchange markets or similar, said prices – absent evidence to the contrary - shall be used in determining the net income of Argentine source.

Were import and/or export operations made between independent parties exceeds the annual amount of AR\$1,000,000, the taxpayer (exporter or importer) shall submit the necessary information to the Federal Revenue Service 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 Revenue Service may consider necessary for the audit of such operations.

3. Branch

A branch is taxed at the rate of 35%, whether or not branch profits are actually distributed. A 35% withholding shall apply, after making certain adjustments, to the distribution of profits not subject to the 35% corporate income tax at the branch level.

4. Corporation and Limited Liability Companies

Corporations and limited liability companies are taxed at the rate of 35%. A 35% withholding shall apply, after making certain adjustments, to dividend and revenue distributions corresponding to profits not subject to the 35% corporate income tax at the corporate level. Dividends are not included in the taxable income of the Argentine recipients.

5. Selected Tax Computation Rules

a. Losses

Business organizations may generally deduct expenses and losses incurred in 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 previously registered with the INPI (see Section b. above) and if payments are supported by a Transfer Pricing Study.

For other inter-company 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 requirements of the transfer of Technology law:		
Amounts paid for technical assistance, engineering or consulting services not available in the Argentine Republic at INPI’s discretion	60%	21%

Kind of income	Presumed Income	Effective Withholding
Amounts paid for assignment of rights or licenses for use of patents others than those contemplated in a) above	80%	28%
Interest on foreign credits:		
a) the borrower is an Argentine financial entity.	43%	15.05%
b) the borrower is an Argentine individual or legal entity and the lender is a banking or financial entity, subject to supervision by a specific banking supervising authority, which is not incorporated in a low tax jurisdiction or, if it is incorporated in a low tax jurisdiction, it must be incorporated in a country which executed a treaty to exchange information with The Argentine Republic. Additionally, banking secrecy, exchange secrecy or the like, should not be raised as an objection to a request for information by the respective tax authority.	43%	15.05%
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	100%	35%
Copyrights and intellectual property rights	35%	12.25%
Salaries, fees, other compensations of expatriates temporarily in the Argentine Republic for no more than 6 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, belonging to corporations registered or located abroad ⁶	50%	17.5%

6 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.

Kind of income	Presumed Income	Effective Withholding
Any other payment to a foreign beneficiary not contemplated above	90%	31.5%
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 requirements of the know-how transfer law:		
a) amounts paid for technical assistance, engineering or consulting services not available in the Argentine Republic at INPI's discretion	60%	21%
b) amounts paid for assignment of rights or licenses for use of patents others than those contemplated in a) above	80%	28%
Interest on foreign credits:		
a) the borrower is an Argentine financial entity.	43%	15.05%
b) the borrower is an Argentine individual or legal entity and the lender is a banking or financial entity, subject to supervision by a specific banking supervising authority, which is not incorporated in a low tax jurisdiction or is incorporated in a country which executed a treaty to exchange information with The Argentine Republic. Additionally, banking secrecy, exchange secrecy or the like, should not be raised as an objection to a request for information by the respective tax authority.	43%	15.05%
c) the borrower is an Argentine corporation (excluding banking and financial entities) or individuals and the lender does not meet the requirements mentioned in b) above	100%	35%
Copyrights and intellectual property rights	35%	12.25%

Kind of income	Presumed Income	Effective Withholding
Salaries, fees, other compensations of expatriates temporarily in the Argentine Republic for no more than 6 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, belonging to corporations registered or located abroad	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 in order to avoid superposition of taxes among residents in two or more different Contracting States on the same taxable issue, within the same period of time, and charged against the same taxpayer.

Thus, it is intended to soften the tax burden on the taxable issue in a transaction between two residents in different Contracting States under the Agreement.

Until now, the Argentine Republic has executed and ratified Agreements with the following countries:

- Germany
- Australia
- Austria
- Belgium
- Bolivia
- Brazil
- Canada
- Chile
- Denmark

- Spain
- Finland
- Great Britain and Northern Ireland
- Italy
- The Netherlands
- Sweden
- France
- Norway
- 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, these Agreements prevail over the Income Tax Law and, therefore, foreign residents would be benefited by the application of reduced rates established in the Agreement whenever they were to make a payment subject to the tax withholding as already explained.

H. Value Added Tax (V.A.T.)

The Argentine V.A.T. is similar to the European Union's V.A.T. 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 of time (e.g., 20 days from the end of each calendar month). There are exemptions to some products and services. The V.A.T. 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 (it might be 10.5% or 27% in some specific cases).

I. Minimum Presumed Income Tax

The Minimum Presumed Income Tax (“MPIT”) established by Law No. 25,063 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 or the fiscal year for individuals and corporations, respectively.

1. Individuals and corporations subject to this tax

The following taxpayers are subject to the MPIT:

- a. companies domiciled in the Argentine Republic;
- b. foundations and non-profit organizations domiciled in the Argentine Republic;
- c. permanent establishments of Argentine residents;
- d. Argentine residents and “sucesiones indivisas” (undivided estates of deceased persons) who own rural properties;
- e. trusts, excluding financial trusts;
- f. closed-end investment funds (“Fondos Comunes de Inversión cerrados”);
- g. permanent establishments domiciled or located in Argentina belonging to companies or individuals domiciled abroad.

2. Tax exemptions

The following assets shall not be computed to calculate this tax:

- a. assets located in the Province of Tierra del Fuego, Antarctica and South Atlantic Islands (in accordance with Law No. 19,640);
- b. assets belonging to entities engaged in mining investment activities falling within the scope of Law No. 24,196;
- c. assets belonging to entities exempt from the Income Tax;
- d. assets exempt by Federal laws or International Conventions;
- e. shares of companies subject to this tax;

- f. assets transferred by trustors to trustees of non-financial trusts;
- g. interests in non-financial investment funds;
- h. capital contributions and irrevocable capital contributions;
- i. assets with an aggregate value not exceeding \$200,000.

3. Related parties

Law No. 25,063 establishes that foreign-owned Argentine companies should consider as computable assets for minimum presumed income tax purposes, all credits against their parent company or individual owner or any parent's branches, or those corporations that directly or indirectly "control" the former.

4. Non-computable assets

The following should not be computed in the tax base:

- a. the value of new personal properties subject to depreciation (except for automobiles) during the fiscal year and the following year after they have been acquired; and
- b. the value of any investment in new buildings or such improvements on previously built ones during the fiscal year in which such total or partial investments have been made, up to the following year.

5. Tax credit against income tax

Income tax paid in a given fiscal year shall be credited against the tax liability arising from MPIT for the same fiscal year. If there is no income tax to pay, the payment on account of the MPIT may be carried forward against the income tax liability corresponding to the following ten fiscal years.

6. Foreign tax credit

Taxpayers are entitled to compute for the determination of their MPIT as tax credit, any tax levied and effectively paid upon its assets located abroad up to the increase of the MPIT deriving from the inclusion of such assets in the taxable base.

J. Personal Asset Tax (“PAT”)

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

Taxpayers of PAT are:

- (i) individuals and states (“*sucesiones indivisas*”) domiciled in Argentina, for the assets located in Argentina and abroad; and
- (ii) individuals and states domiciled abroad, only for the assets located in Argentina.

For individuals and states domiciled in Argentina the PAT shall apply at the rate of 0.5% when the value of their assets is over AR\$ 102,300, but under AR\$ 200,000 at the end of the calendar year, or 0.75% when the value of their assets exceeds AR\$ 200,000 at the end of the calendar year. These taxpayers may deduct from the taxable base a non-taxable amount of AR\$102,300. Equity holdings or interests in Argentine companies, however, are always subject to a 0.5% rate (and not to a 0.75% rate) and the non-taxable sum of AR\$102,300 does not apply.

Individuals and estates not domiciled in the Argentine Republic and non-Argentine companies are not entitled to apply the non-taxable amount of AR\$102,300 and are subject to this tax at the rate of 0.5% on their equity holdings or interests in Argentine companies. Individuals and estates not domiciled in the Argentine Republic are not entitled to apply the non-taxable amount of AR\$102,300, nor are they subject to this tax at the rate of 0.75% 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. Should they not be co-owned, possessed, administered, used, enjoyed, disposed of, deposited with or otherwise under the custody of an Argentine taxpayer, no personal assets tax shall be applied. A 1.5% rate shall be applied (instead of such 0.75% rate) on unexploited urban real property owned by non-Argentine companies, among others.

In the case of equities or interest in corporate vehicles domiciled in Argentina, the 0.5% PAT should be determined and paid by the corporate vehicle as a substitute taxpayer on behalf of non-resident equity holders (individuals, estates or legal entities) and individual residents.

For the purpose of this tax only, individuals are considered as “domiciled in the Argentine Republic”, *inter-alia*, if they have their actual domicile in the Argentine Republic or, for expatriates, if they have resided in the Argentine Republic for more than 5 years. Individuals domiciled in the Argentine Republic are entitled to a credit for similar taxes paid abroad, the amount of which must not exceed the increase of the PAT as a consequence of including taxable assets located abroad in the taxable base.

K. Tax on Debits and Credits on Checking Accounts and other Transactions

This tax shall be applied:

- a. to all credits and debits made in any bank account, whatever their nature may be, opened with the entities governed by the Ley de Entidades Financieras (Financial Entities’ Law).
- b. to all transactions carried out by the entities mentioned in the previous paragraph, the beneficiaries of which do not use the accounts specified therein, irrespective of the denomination given to the transaction, the methods applied to carry it out - including the payment in cash-, and its legal implementation;
- c. to all own or third parties’ funds movements, even in cash, that any individual, included those falling within the scope of the *Ley de Entidades Financieras* (Financial Entities’ Law) made on its own account or on account and/or in the name of any third party, by any means, their denominations and legal implementation, including those movements to credit funds to establishments adhered to credit and/or debit card systems.

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 for certain specific cases.

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

L. Gross Receipts Tax

This is a provincial tax levied on the gross receipts of independent activities performed for a profit. It is established by each of the Argentine Provinces. In the City of Buenos Aires, for instance, the general rate for the fiscal year 2004 is 3%.

M. Stamp Tax

The stamp tax is a local tax on documents that is usually applied at the rate of 1% on any document or exchange of documents evidencing the creation, amendment and/or extinction of pecuniary rights and/or obligations. This tax is payable upon local execution of what is considered to be a “taxable document” in each of the provinces. It also applies to a document having “effects” in a given province other than the one in which it has been 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.) In the City of Buenos Aires, this tax is payable only on transactions involving real property not intended for dwelling purposes.

N. 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 Municipalities, such as hygiene and security services. The gross receipts arising from the taxpayer’s activities serve as taxable base of these fees.

O. 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 3 months.

During the trial period, the contract may be terminated without just cause and the employee shall not be entitled to the mandatory severance payments due upon dismissal without just cause. In case of termination during the 3-month trial period, the employer must give a prior written notice of 15 days before the termination date; failure to comply with this obligation entitles the terminated employee to receive a severance payment in lieu of such omitted prior notice.

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

However, in certain cases, a written contract is required and/or advisable, namely:

- a. Fixed term contract: its term should not exceed 5 years and employers must have an extraordinary cause.
- b. Temporary contract: executed to perform a specific piece of work or to provide a specific service, whenever it is so determined by extraordinary circumstances;
- c. Seasonal contract: executed based on the kind of activity performed by the employee, who only provides his/her services at a specified time of the year.
- d. Apprenticeship and Scholarship contracts: executed by young individuals who meet certain requirements for the purpose of learning a craft, trade or profession.

Under the ECL, employers must register their employees’ basic data (including hire date and remuneration) within a Special Payroll Book, which must be obtained before the labor administrative authority, and is subject to periodical control by the Ministry of Labor. Failure to comply with said registration is subject to severe fines.

2. Employee's 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, etc.). Certain limits apply, however: they may not agree with the salary that is below the minimum wage fixed by the Government, which at present amounts to \$630 per month (or \$ 3, 15 per hour). As from October 2005, the non-remunerative allowance of \$100 due to the employees was converted to a remunerative payment of \$120.
- 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, applicable to the employer's activity. The collective bargaining agreements also set forth specific payments, such as production awards, professional degree, second language, seniority, which are also mandatory.
- c. Equal pay: The rule "equal pay for equal task" applies. However, employers may pay incentives to those employees who perform outstanding services
- d. Overtime pay: Regular employees (those who are subject to the mandatory rules regarding working hours) 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. Executives and other special categories of employees 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 Supplementary Annual Salary" in 2 instalments: one on June 30, and the other remaining one on December 31 of each year. The amount of each instalment is equivalent to 50% of the highest remuneration earned by the employee in the pertinent semester.
- f. Paid leaves: Employees are entitled to a paid vacation leave that ranges from 14 to 35 calendar days, depending on the employee's seniority.

Employees are also entitled to a paid sick leave that ranges from 3 to 12 months, depending on the employee's seniority and family responsibilities (e.g., minor children).

Finally, employees are entitled to enjoy 13 holidays and special leaves 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. As from October 2005, the minimum coverage per employee is \$6,750 and the monthly premium paid by the employer is \$0,192 per each \$1,000 assured. 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 (A.R.T.)* (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 amongst a list of health organizations managed by the trade unions and white-collar employees (in certain situations) are entitled to choose from amongst 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 3-month pregnancy/maternity paid leave and the unemployment subsidy may extend to 1 year of monthly payments (provided that the respective beneficiaries meet the requirements set forth in the law).
- k. Severance pay: Employees are entitled to receive severance pay upon dismissal without just cause, death or total disability, employer's bankruptcy or termination 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 authority. Upon the fulfilment of the corresponding legal requirements, the *PyMEs* may be entitled to receive benefits in specific areas (e.g., government subsidies for credits, preference in public bids, etc.).

Argentine Law No. 24,467/1995 specifically regulates the employment relationships in the so-called “*Small Companies*” (“*Pequeñas Empresas*”). Pursuant to said law, *Small Companies* are those that comply with the following conditions:

- (a) have less than 40 employees;
- (b) their annual billing (net of V.A.T.) is lower than: (i) Rural: \$2,500,000; (ii) Industrial: \$5,000,000; (iii) Commercial: \$3,000,000; (iv) Services: \$4,000,000.

As regards companies existing prior to the effective date of this law (06/08/1995), such estimation of employees shall be based on the staff existing as of 01/01/1995. *Small Companies* going beyond one or both of the above-mentioned conditions may remain under the special regime set forth in this law for a term of 3 years, provided they do not double either their staff (number of employees in their headcount/payroll) or their billing.

4. Termination

a. Procedure

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

- 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;
- Expiration of an agreed fixed term of employment.

Employers who dismiss employees without just cause during the extended protected period set forth by Emergency Law No. 25,561 and its amendments (including Law 25,972) , must pay the dismissed employee an additional 50% (i.e., fifty percent) on the ordinary mandatory severance package resulting from the termination of the employment contract without just cause -explained below-. In addition, before doing so, employers must give notice of the unfair dismissal to the labor authority by complying with certain special procedures.

The employer may terminate the employment relationship with just cause when the employee commits a serious offence against him. The activities 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 ground 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, etc.).

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” / “economic or technological reasons” not attributed to the employer and beyond the employer’s control. In such a case, lay-offs must be carried out in order of seniority.

Massive lay-offs must comply with a special procedure before the labor authorities, with 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 can 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 the minimum and mandatory severance payments) to the terminated or resigning employees. These additional payments are bonuses subject to income tax withholdings, but exempt from social security contributions, because they are considered extraordinary and exceptional bonuses (i.e., only paid upon termination of employment contract).

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 shall pay a mandatory package that comprises a severance payment based on seniority and, if no prior written notice was given, a severance pay in lieu of such omitted prior termination notice.

b. Mandatory Severance Pay Based On Seniority

The employer must pay a mandatory severance pay based on seniority, equivalent to one (1) gross highest monthly and normal salary for each year of service or fraction thereof (in excess of three months). In no event may the said mandatory severance pay based on seniority be lower than one (1) 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 all the 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 favourable to the employee shall be applied. This ceiling is applicable for unionized and non-unionized employees. In average, this statutory maximum amount (three times the average of all the remuneration contemplated in the pertinent collective bargaining agreement) is approximately \$2,000.

However, please note that on September 14, 2004, the Supreme Court of Justice has ruled in re: "*Vizzoti, Carlos A. vs. AMSA S.A. re. dismissal*", on a new criterion to calculate the base salary to be taken into account when estimating the Mandatory Severance Pay Based On Seniority. Pursuant to this ruling, the statutory ceiling may not reduce the employees' best salary 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 fraction thereof (in excess of three months). Please note that over and above this amount, the employer must apply the aggravated 80% severance payment due to the Emergency Law and related executive orders.

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

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

c. Severance payment in lieu of prior termination notice

Absence of a prior written termination notice in due time entitles the employees to claim the following severance payment:

- (a) employees dismissed during the 3 months trial period are entitled to 15 days of the employee's monthly salary;
- (b) employees with less than 5 years of seniority are entitled to 1 monthly salary;
- (c) employees with more than 5 years of seniority are entitled to 2 monthly salaries.

The mandatory severance payment in lieu of prior termination notice for employees of *Small Companies*⁷ (see Section 3), is equal to 1 monthly salary.

In addition, employers must pay the salary for the days remaining in the month in which the termination occurred (balance salary of the month of termination). The employer must pay the proportional part of the thirteenth mandatory salary on this item, which is an additional 1/12. Employees who work for *Small Companies* are not entitled to this balance payment.

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

7 Applicable to Employees hired by small companies as from June 8, 1995.

d. Protected categories

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

Pregnant, new mothers and employees who have just gotten married but who have been dismissed without just cause are entitled to an additional severance indemnity payment equal to 1 year of their salaries.

Union representatives may not be terminated. The employer may not change their work conditions without any just cause within the term of 1 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. However, if the procedure is not followed, the representative may choose between being reinstated to his job or receiving, apart from the mandatory severance pay package, an additional severance pay equal to all the salaries that he would have received up to the end of his representation period plus salaries for one (1) additional year.

According to the Anti-Discrimination Law No. 23,592, those employees dismissed on the grounds of discrimination because of their race, religion, nationality, ideology, political or union opinion and sex, 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 in its performance by means of summary proceedings according to Section 43 of the National Constitution. Discriminated employees who are reinstated are entitled to back wages. The employees also have the option to terminate the employment contract with cause and claim the mandatory severance payments from their employers under constructive dismissal. Under the provisions of the Civil Code, the adversely affected employees may also claim for 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 significantly increase the mandatory severance package.

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 travelling salesmen.

e. Aggravated penalty due to the Economic Emergency

Pursuant to the Emergency Law 25,561 as amended (since January 6, 2002), employers have restrictions in dismissing employees without fair cause.

Law 25,972 sets forth that unfair dismissals shall continue to have restrictions until the unemployment rate determined by the INDEC (National Institute of Statistics and Censuses) becomes lower than 10%.

In case of an unfair dismissal, the employer shall pay the dismissed employee all the items resulting from the termination of employment without just cause plus an additional 50% of the Severance Payment for Seniority, as ruled in Section 245 of the ECL.

The additional 50% (fifty percent) shall not apply to those employees who were hired after January 1st, 2003, provided that their employment represented an increase in the employer's total headcount as of December 31, 2002.

Finally, employers must follow a special procedure and file a certain form with the labor authorities prior to dismissal, either without just cause or under a redundancy plan.

5. Collective Bargaining Agreements (CBAs)

Law governing CBAs rules that parties 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 (travelling salesmen);
- (d) company wide (all workers of Company "X").

Under this law, companies may not operate union free. Almost all industries and activities already have a trade union that collectively represents those employees.

Unless previously agreed upon in the CBA, executive or senior employees and managers are subject neither to its provisions nor to union representation. However, employees who do not qualify as executive or senior employees or managers are subject to CBAs and union representation.

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

The Ministry of Labor must approve CBAs. If such approval is obtained, CBAs are binding not only to the 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 may impose additional contributions for the trade union that negotiated the agreement.

6. Collective Disputes

The Law governing Collective Disputes sets forth that the Ministry of Labor may summon the parties to settle a collective dispute. During a specific term while the Ministry is intervening in the dispute, the parties may not take direct action. The Labor Ministry is empowered to direct the parties to retract any measures that may have caused the dispute.

If during the appropriate period, the parties do not agree to a settlement or to arbitration, they are free to take whatever legal action they deem suitable, including direct action (e.g., strike, lock-out, etc.).

7. 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 travelling salesmen, seamen, workers who work in their homes, farm agrarian workers, professional journalists, private teachers, and domestic workers.

8. Social Security Regulations

Employees' salaries are subject to social security payments. Employer's contributions depend upon their activity and turnover amount: (a) 27% if the employer is engaged in the provision of services or in commercial activities and the invoiced gross amount exceeds \$48,000,000; and (b) 23% for the rest of the employers. Employees' contribution shall also depend on the retirement benefit they have chosen: (a) 13% in the private regime (capitalization through private retirement

funds); and (b) 17% in the public regime (public retirement and pension fund system). Nevertheless, such difference shall be eliminated by October 1, 2006, when both rates shall be 17%.

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 monthly gross salary. Currently, this legal ceiling is \$4,800. The portion of the employee’s monthly salary exceeding the legal ceiling is not subject to social security contributions.

As regards the social security contributions paid by the employers, the legal ceiling for contributions to Health Care Provider (“*Obra Social*”) and Labor Risks Insurance Company (“*A.R.T*”) is \$ 4,800; and there is no legal ceiling in the case of contributions for retirement, family allowances, unemployment subsidy and health care provider for the retired (“*INSSJP*”).

The Retirement and Pension Fund System has both a public and a private regime. Employees and self-employed individuals must choose any of them. Their contributions finance some benefits that are common to both systems: an earnings-related disability pension and an earnings-related death benefit. The significant difference is that those choosing the public regime are entitled to an earnings-related retirement pension (i.e., the amount of the pension depends on their earnings level during employment), whereas those opting for the private system regime are entitled to a retirement pension which depends on the mandatory and voluntary amounts contributed to the pension fund administered by companies known as *AFJP* and the success of *AFJP*’s investments.

The A.R.T. (Workers’ compensation or Labor Risk Insurance Company) premium is not included in the above-mentioned contribution rates. Employers must pay for it. This premium agrees with pertinent *ART* and depends on the activities. It is usually an average of 3% of the payroll. Please notice that the *ART* System is currently under review and the Supreme Court of Justice has declared that, in certain circumstances, payments made under this law and the clause that prohibits employees to pursue damages under Civil Code provisions are not reasonable

P. The Argentine Financial System

1. Monetary and Banking Authorities

The “BCRA” (through its different agencies) is the financial agent of the federal Government, which conducts its monetary policy; handles the foreign currency reserves of the country; controls financial entities (including banks), exports and financings; and issues regulations and special rules related thereto.

2. Financial Institutions

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

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 should not run companies engaged in commercial, industrial or farming activities or any other activities without prior BCRA authorization;
- b. They should not encumber their assets without prior BCRA authorization;
- c. They should not accept their own shares as collateral security for any kind of transaction;
- d. They should not enter into any kind of transaction with their directors, officers, managers or any other persons directly related to the institution under more favourable conditions 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. In this regard, the background and technical knowledge of the founders, directors and officers of the new financial entity are particularly important.

Transactions are to commence not later than one year after BCRA's approval. Under present regulations, it has been held that a financial entity "starts its transactions" when it begins doing business with the public in general.

5. Foreign Financial Institutions

Executive Order No. 146/94 had a significant impact on foreign financial institutions such as banks, financial companies and savings and loan institutions interested in operating in the local market.

It has two remarkable features. It abrogated the "*reciprocity principle*" set forth in Section 16 of the FEL and enforced by the Argentine banking legislation for almost 60 years. Pursuant to this principle, the BCRA only considered the applications of foreign financial institutions from countries that granted the same treatment to Argentine financial institutions. However, the full power of the BCRA to reject applications on the basis of its discretionary powers still remains.

This Executive Order also provides that financial institutions, with 30% of corporate capital held by individuals or entities domiciled abroad, and branches of foreign financial institutions, should enjoy the same treatment granted to domestic financial institutions. Thus, foreign financial institutions may request authorization from the BCRA to engage in any banking business contemplated in the FEL. Prior to this, foreign financial institutions could only act as investment or commercial banks.

Executive Order No. 146/94 was clearly intended to increase competition among financial institutions allowing the access of new ones to the growing local banking market.

At present, all sections of the FEL related to foreign limitations or specific regulations have been repealed or otherwise amended in accordance with the new foreign investment policies implemented by the Argentine Republic. In this regard, foreign investors should receive the same treatment given to local investors.

6. Mergers and Acquisitions

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

BCRA's regulations require directors and statutory auditors of a financial entity to report any acquisition of shares, the result 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 its approval within ten days after the execution of the agreement or letter of intent or the receipt of any payment, whichever shall first occur, 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.

In analyzing applications for approval, the BCRA emphasizes the following matters: (i) the acquisition agreement and the control structure resulting from the acquisition; (ii) the financial background, expertise and solvency of the purchasers; (iii) the financial statements, financial condition and background of directors and managers; (iv) the submission of appropriate evidence of the origin of funds to be paid for the transaction; and (v) the background and personal data of the members of the board and statutory auditors to be appointed after completion of the acquisition.

7. New Branches

The requirements to open new branches of domestic financial institutions are the following:

- a. fully paid-in minimum capital;
- b. no reserve deficiencies during the previous six months;
- c. compliance with regulations concerning financial condition and financing;

- d. absence of economic or financial difficulties;
- e. absence of excessive risks;
- f. absence of organizational problems; updated reporting regime (through electronic means); and
- g. investment rank of 1, 2 or 3 (i) according to the Superintendencia of Financial and Exchange Entities (ii) vis a vis their computer systems and (iii) vis a vis the duties related to the evaluation of the internal control system.

Q. Capital Markets

1. Securities Market

Securities markets are gradually recovering after the financial and economic crisis, which arose in December 2001. Owing mainly to an increase in exports and partially to other factors, the exchange rate of the US dollar decrease and savings and investments were strongly directed to the securities market. The “*Comisión Nacional de Valores*” (National Securities Commission) (the “CNV”) regulates markets dealing with public offering of securities in the Argentine Republic. The CNV was established in 1937. Individuals and entities dealing in public securities markets, as well as in the public offering of all securities other than primary issues of Government securities, are subject to the CNV’s control.

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

The Public Offering Law No. 17,811, as amended by Executive Order No. 677/011 and subsequent regulations, govern the public trading of securities in the Argentine Republic. In accordance with the Public Offering Law, the public trading of securities in exchanges must be made within the “*Mercados de Valores*” (Securities Markets), which are institutions organized as stock corporations that must be affiliated with the different stock exchanges or “*Bolsas de Comercio*” (Stock Exchanges). Each *Mercado de Valores* is liable for all transactions performed by its stockbrokers and may impose sanctions on them. Transactions entered into and between stockbrokers are guaranteed by each *Mercado de Valores*.

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.

In order to be a member of the BASE and be authorized to operate as a stockbroker, individuals and corporations must own a share in the *Mercado de Valores de Buenos Aires S.A.* (“MVBA”).

Pursuant to Law No. 20,643, the debt and equity securities traded on the exchanges and the OTC market are to be deposited in the *Caja de Valores S.A.* (“C.D.V.”), which acts as a central depository and clearing house for securities trading. The C.D.V. is a corporation, the shares of which are held by BASE and the MVBA.

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 Law, Debt Notes may be issued to bearer, registered or book-entry forms, and may be denominated in either local or foreign currency. Rates on 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, and branches of foreign corporations are empowered to issue debt notes upon compliance with the legal requirements of the ON Law. Different classes 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 shall have been sold.

It is not necessary that by laws 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.

In September 2004, CNV and AFIP passed the joint resolution CNV 470/2004 and AFIP 1738 establishing the terms under which the ONs must be issued and originally offered in order to obtain the tax benefits set forth in the ON Law (the “Joint Resolution”).

The obligations that the Joint Resolution requires from issuers are as follows:

- (i) a plan describing the application of the funds obtained from the sale of the ONs;
- (ii) in case of placement of an ONs offer using “*book building*” or similar placement devices, the issuer shall (x) publish the final prospectus for the ONs describing placement efforts, (y) publish invitations to offer for the ONs for a minimum term, (z) register any bids received during the invitation to offer period.

Those investors that have registered bids with the issuer must ratify the same on the subscription date, which shall be conducted on a *pro rata* basis.

The Joint Resolution sets forth that the placement of ONs in international markets shall qualify as a public offer of securities for Argentine Law purposes, no matter the treatment that such foreign market gives to the offer, if the issuer or the hired underwriter duly individualizes the placement efforts in the prospectus of the issuance and gives evidence of such placement efforts thereafter.

3. Equities

During the 1990’s, and following the enactment of the Convertibility Law in April 1991, the stock market had an outstanding performance as a financing source. Many privatized companies became publicly traded corporations and had access to European and American public and private markets. However, access to international financial markets had been reduced after the collapse of the economy and the default in most of the public and private debt of the country.

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, the Buenos Aires Stock Exchange (the "BASE") shall require that an issuer shows profits during the previous two years, though a separate procedure is available for companies without 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 that it would not result in any unjustified dilution of the existing shareholders, they being entitled to pre-emptive rights with respect to new issuances of shares.

R. Environment

1. Sources of Environmental Legislation

Pursuant to Section 41 of the Argentine Constitution, the federal government shall legislate on the essential environmental matters and the provinces shall establish their own environmental laws and regulations to complement the federal ones and to deal with specific local environmental matters. The Constitutions of some provinces include environmental provisions.

Section 41 of the Argentine Constitution, as amended in 1994, states the need to protect the environment to allow manufacturing activities fulfil current needs without jeopardizing future generations. The environmental damage shall essentially cause the obligation to remediate it as set forth by the law. It specifically forbids the entry of wastes currently hazardous or not and of radioactive wastes.

2. Federal Legislation

The main federal applicable rules are hereinafter set forth:

a. Environmental Law

The Environmental Law No. 25,675 enacted in 2002 and Executive Order No. 2413/02 regulates the minimum requirements to obtain a maintainable and adequate management of the environment, the preservation and protection of the biological diversity and the implementation of a maintainable development.

The law is applicable within the whole Argentine territory. The law foresees the obligation to take an insurance policy to cover the remediation of potential damages that may be caused by any individual or legal entity carrying out activities which are dangerous to the environment.

The law foresees the obligation of remediation of any environmental damages by the person who has caused it., the law foresees an indemnification only if remediation is not possible. Civil or criminal responsibility for an environmental damage is independent from the administrative one.

The government agency in charge of the enforcement of the law is the Secretariat of Environment and Maintainable Development.

b. Hazardous Waste

Hazardous Waste Law No. 24,051 enacted in 1992 (the “HWL”) and Executive Order No. 831/93 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, fauna or 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 ruled by international conventions and specific laws.

The governmental agency in charge of the enforcement of 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 shall issue environmental certificates authorizing the generation, transportation, treatment and disposal of hazardous waste.

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

c. **Water Pollution**

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

Law 25,688, enacted in 2003, although it is subject to several objections, regulates the minimum requirements to preserve, take advantage of and foresee a reasonable use of the water. The law needs to be ruled.

d. **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.

e. **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 that is 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 are to be filed with the SE on an annual basis.

3. Provincial and Municipal Legislation

Environmental laws and regulations vary from one jurisdiction to another. Commonly, 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 a province.

S. Mining

1. Exploration Permits

Any company or individual may request an exclusive exploration permit. The request is filed together with: (i) the geographic coordinates of the limits of the requested area; (ii) the name of the owner of the surface land; (iii) a description of the work to be done, including the estimated investment and equipment; and (iv) a sworn statement affirming that the request does not violate the Mining Code and establishing the area and conditions that the explorer must meet. The person requesting the exploration permit must pay, with the request, an exploration fee. 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 evidence of payment of the fee is not submitted. Currently, for first and second category minerals (gold, silver, copper, lithium, salt, etc.) the exploration fee is approximately \$400⁸ for each 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 federal mining authority (“Authority”): (i) registers the permit; (ii) notifies the owner of the land; and (iii) publishes 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 grants the permit immediately and from the filing date all discoveries, even those made by third parties, belong to the permit holder.

2. Concession of Mines

The federal government and the provinces are the owners of the mines located in 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 discovering company.

⁸ Up to date the exchange rate is US\$ 1=\$ 3, approximately.

The concession grants its holder a perpetual property right to the mine it has discovered. But the right is subject to two conditions: (a) payment of an annual fee; and (b) investment of a minimum amount. If the holder of the concession does not comply, the concession is forfeited. For first class minerals (hard minerals) and most second class minerals, the annual fee per unit is approximately \$80⁹; for other second class minerals, the annual fee per unit is approximately \$40¹⁰.

Provided the conditions are met, the holder of a mining concession may sell, lease and otherwise contract with regard to the concession.

3. Mining Modernization Law

In June, 1995, the government issued the mining modernization law. Amongst its innovations, it eliminated the prior large-scale mining regime, increased the exploration areas that private parties can claim in each province to 200,000 hectares, and regulated geological investigation using aircraft. In addition, it reduced the areas reserved for the exclusive investigation of 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 modified regime, private companies can 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 being entitled to a legal rather than an administrative concession. Finally, the government is required to limit the areas reserved for its exclusive investigation or exploration.

4. Mining Investment Law

This Federal law was issued in April 1993 (“Mining Investment Law”) replacing the old mining promotional regime (1979) and granting certain tax advantages on Federal, Provincial and Municipal taxes. Most of the Provinces have adhered to this law. Below is a summary of the benefits granted by this law.

9 See Footnote N° 2.

10 See Footnote N° 2.

4.1 Tax stability.

Any company qualified under this law enjoys a “tax stability” for thirty years starting from the day the feasibility study is filed accordingly. The government is guaranteeing that the qualified company will be subject, for thirty years, to: (a) the Federal, Provincial and Municipal taxes in effect at the submission of the project, and (b) any increase in the tax rates or new taxes will not apply to the company operating under this law. The Value Added Tax (“VAT”), at a rate of 21%, is excluded from the tax stability clause.

The stability shall also apply to the exchange control and customs duties excluding the refund of taxes related to exportations.

4.2 Repatriation of Exports’ Profits.

Tax stability granted to mining companies was recently tested. As a consequence of the devaluation of the Argentine currency and the economic crisis (2001), exporters are obliged to repatriate their exporter-derived profits. Debate existed as to whether mining companies that received the tax stability were exempted from that obligation. The Executive Branch has clarified this matter through Executive Order 417/03, setting forth that mining companies that obtained the tax stability before the obligation to repatriate profits was imposed are not subject to that obligation. However, in June 2004, this exemption was extended to companies that obtained the tax stability in June 2004 (per Executive Order 753/2004). This applies to new projects and to the expansion of existing ones. Also, any company that obtains fiscal stability shall be entitled to freely dispose of the funds arising from any external loan (before the enactment of this Executive Order they were required to bring the funds back to Argentina), and they shall be entitled to request exports reimbursement (taxes) without having to bring the export proceeds to Argentina or to file any other supporting documents.

4.3 Registration.

To qualify for the benefits of this law, the company carrying out the exploration or exploitation activities must be registered with the National Mining Authority. In addition, to enjoy the tax stability the parties need to file additional documents related to the feasibility study, which approval is considered the start-up of the term starting from the day the benefit is granted.

For registration purposes, mining companies must file a sworn statement stating, among others, the company's details (e.g., denomination, tax identification number and corporate registration number), domicile, managers, activities carried on and mining rights held.

4.4 Income tax.

This Federal 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 in any other expenses necessary to determine the feasibility of the project incurred before the filing of the feasibility study enjoy a double deductibility. The exploration fee and Canon are not included within 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 start up of the productive process takes place.
- **Accelerated Depreciation:** An accelerated depreciation regime is applicable to new mining projects and to the enlargement of the existing ones, as well as all the capital investments made during the exploitation. In this sense, investments made in infrastructure may be depreciated 60% during the year the investor obtains the corresponding authorization and the remaining 40% in equal parts in the following two fiscal periods. On the other hand, investments making use of other 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 chose between the general depreciation regime established by the Argentine income tax law or the accelerated depreciation procedure herein mentioned.

- If a company qualifies under this 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 cannot sell them within 5 consecutive years starting from the day of contribution. However, under certain circumstances, the Mining Authority may authorize the sale of those assets.

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

4.5 Import Duties.

Any company qualified under this law may import into Argentina capital goods, equipment and spare parts without having to pay the import duties (0% to 35%), a flat duty called duty of statistics (0.5%) or any special import tax. Imports entertained under leasing agreements that comply with certain requirements may also benefit from the duties' exemption.

4.6 Royalties.

Any Province adhering to tax duties may charge a maximum 3% royalty on the "mine head" (*boca de mina*) value of extracted minerals.

4.7 Return of VAT for exploration activities.

VAT consists of a tax debit and credit levied on the sale of goods located within the country or placed within the country, the rendering of most services, leases or works from abroad and within the country and import of movable goods. The excess of the tax debits over the tax credits must be paid within a certain period (e.g., 20 days from the end of each calendar month). Some products and services are exempted. The VAT applies on the net price of the good, service or work, generally at the rate of 21%. The rate is different in some specific cases.

To lower the financial burden that paying VAT means for mining companies and, as a way to avoid accumulating VAT credits during the exploration and construction, two VAT regimes have been established. These regimes are applicable to mining investments that take place until December 31, 2005. A company registered under the Mining Investment Law may choose to accede to only one of the following regimes:

- Anticipated VAT reimbursement: Applicable to the purchase and importation of capital assets and the construction of infrastructure. According to recent

regulations, mining companies that carry on exploration activities may also benefit from this regime. In general terms, the regime consists in the reimbursement by the Tax Authority of VAT credits within 60 days of the investment, the purchase or importation of the capital assets, once the reimbursement form is filed.

- VAT financing regime: Applicable to the purchase and importation of new capital assets and the construction of infrastructure. The regime consists of a credit granted by a bank for the payment of the VAT, which interest is borne by the National government. The company must repay principal to the lending bank. Any VAT credits reimbursed by the government as a consequence of exportations must be directly paid to the lending bank. Guaranties will be requested by the financial entities to assure the payment of the credit.

5. Federal Mining Agreement

In practice, most mineral resources belong to the provinces. On May 6, 1993, all Argentine provinces executed an agreement with the federal government to unify 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:

- 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 in 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 take the steps necessary to avoid certain tariffs affecting mining activities (such as electricity, gas, fuel and transport tariffs) distorting investment incentives.

- g. Mining companies taking measures to protect the environment, such as the reforestation of mining areas, will receive further incentives.

6. Mining Reorganization Law

This law was enacted in June of 1993. It provides for the preparation of a systematic geological chart of Argentina's natural resources, to be available to any interested party. It also creates Federal Mining Council to advise the National Secretariat of Mining. The Council is composed of one representative from each province and one representing the federal government.

T. Distribution Agreements

1. Dealer Legislation

The Argentine Civil and Commercial Codes do not specifically regulate distribution agreements. Furthermore, unlike a number of other Latin American jurisdictions, the Argentine Republic has not enacted any legislation that grants extra-contractual rights to independent distributors to be paid compensation in case of termination. In the absence of abuse or malicious exercise of rights a distributor is not entitled to any compensation in case of termination. Thus, a principal may terminate or refuse to renew a distribution agreement without incurring in any tortious liability, provided that he acts in good faith, gives the distributor adequate notice in advance, and complies with the terms of the distribution agreement.

2. Term

The parties are free to set the terms and conditions for the renewal and termination of a distribution agreement. 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 to case basis.

U. Antitrust Law

1. Legal Framework

The “*Ley de Defensa de la Competencia*” (Competition Defense Law) No. 25,156 enacted on September 20, 1999, introduced some major changes with respect to the previous Law No. 22,262 that was fully abrogated. The most important change is the introduction of a merger control procedure.

Said law creates the National Tribunal for the Defense of Competition (the “Tribunal”) as the enforcing authority of the Law. The Tribunal is set up as an autonomous administrative body within the Ministry of the Economy, Public Works and Services. The Tribunal, however, has not been set up yet and no specific timetable exists therefore. Its tasks are currently being performed by the Competition Defense Commission (the “Commission”), the antitrust agency in charge of applying the previous Law No. 22,262. Therefore, when we make reference to the Tribunal, it must be understood that its tasks are currently being performed by the Commission.

Law No. 25,156 was amended on April 5, 2001, by Executive Order No. 396/01 (the “EO 396”). The EO 396 introduces major changes to the merger control system set forth in the Law. The main purpose of these changes is to reduce substantially the number of transactions subject to the obligation to obtain approval from the Commission. Those changes shall be discussed in detail below.

Finally, Executive Order No. 89/01 (the “EO 89”) regulates some provisions of the Law related to merger control procedures. The EO 89 systematizes the administrative practice developed since the Law was enacted.

2. Merger Control

2.1 Overview

Section 7 of Law No. 25,156 prohibits any merger, the purpose or effect of which may be the limitation or distortion of competition to the detriment of the general economic interest.

2.2 Transactions included. Notification. Approval Procedure. Reportability Criteria

Any merger that complies with the definitions of merger, size of transaction and territorial jurisdiction set forth by Law No. 25,156 must be reported to the Tribunal.

2.2.1. The following transactions are within the scope of Law No. 25,156:

- a. mergers of previously independent entities;
- b. bulk transfers;
- c. acquisition of shares or equity interests, or debts, or any other rights to shares or equity interests that may entitle the holder to (i) convert them into shares or equity participation, or (ii) have the control of, or a significant influence on, the internal decision-making process of the entity that issues them; and
- d. any other agreement or transaction that (i) may, legally or potentially, transfer the assets of another entity to any entity or economic group, or (ii) may grant to that entity or economic group the control of, or a significant influence on the adoption of ordinary or extraordinary business decisions of the entity.

2.2.2. Size of transaction

Section 8 of Law No. 25,156, as amended by the EO 396, establishes that any of the above-mentioned transactions must be reported to the authorities when the cumulative annual turnover of the involved parties in the Argentine Republic exceeds the sum of \$200 million. The annual turnover of the acquiring group plus the acquired company/ies in the Argentine Republic must be taken into account for calculation purposes.

Pursuant to Law No. 25,156, cumulative business volume means the total gross ordinary sales of goods and services of the new combined entity in 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 made up of the sales of:

- a. the acquired entity;

- b. the entities in which the acquired entity has, directly or indirectly, (i) more than one half of the equity, (ii) the power to exercise more than one half of the voting rights; (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 manage or conduct the activities of the entity;
- c. any entity that enjoys any of the rights listed in b. above with respect to any of the involved entities;
- d. any entity in which any of the entities listed in c. above has any of the rights listed in b. above;
- e. any entity in which any of the entities listed in a. through d. above has any of the rights listed in b. above.

The Commission has clarified the text of the Law by establishing that, for 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, expressly excluding the seller's turnover.

2.2.3. Territorial Jurisdiction

As explained above, the Tribunal shall have jurisdiction over those global mergers having effects in the Argentine Republic in which the cumulative business volume of the new combined entity in the Argentine Republic amounts to more than \$200 million.

2.2.4. Transactions exempt from filing the merger notice

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

- a. the acquisition of any entity in which the buyer already owns more than 50% of its equity;
- b. the acquisition of bonds, debentures, shares without voting rights or any other debt security of the entity;
- c. the acquisition of an entity by one foreign group of companies that had not previously owned any assets or shares in other Argentine entities;
- d. the acquisition of companies under liquidation proceedings that had not operated in the Argentine Republic during the year prior to the acquisition;

- e. the EO 396, furthermore, exempts from notification, all those transactions that, even though they exceed the \$200 million threshold, have the following characteristics:
- the total value of the assets being transferred in the Argentine Republic does not exceed the sum of \$20 million; and
 - the total price of the transaction in the Argentine Republic does not exceed the sum of \$20 million;
 - the acquiring group had not entered into any other transaction in the previous twelve or thirty-six months exceeding the total sum of \$20 million or \$60 million, 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 buyer and seller share control over the company (e.g., a 60/40 joint venture with a shareholders' agreement granting veto rights regarding certain strategic matters to the minority shareholder, who happens to be the seller) the acquisition of the company must be duly 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 be met. However, the Commission subsequently has stated the need to analyze the obligation to notify in these circumstances on a case-to-case basis.

2.2.5. Information and Documents to be submitted to the Tribunal

Resolution No. 40/01 of the *Secretaría de Defensa de la Competencia y del Consumidor* (Competition Defense and Consumer's Protection Secretariat) sets forth the information to be provided by the intervening parties to the Commission. 1-F Form of Notice of Mergers provides in detail all the information to be furnished by the "intervening" companies. For more complex cases, the Commission may request the filing of a 2-F Form and even a 3 F Form.

2.2.6. Penalties for non-compliance with the notice requirements

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

2.2.7. Timeframe for filing the notice

Notice to the authorities must be filed:

- before executing the merger; or
- within one week as from the execution date of the agreement; or
- within one week as from the publication date of the purchase offer; or
- within one week as from the acquisition date of a controlling interest;
- Whichever shall occur first.

The EO 89 settles the issue of the date in which the one-week-period to give notice of a transaction subject to approval starts running. It provides that the term begins as from: (i) the execution date of the definitive merger agreement pursuant to section 83 paragraph 4 of the Commercial Companies' Law No. 19,550; (ii) the registration date of the final bulk transfer agreement with the Public Registry of Commerce; (iii) the date on which the buyer becomes the effective owner of the shares of the company being sold; and (iv) the closing date of the transaction according to the respective legislation.

2.2.8. Analysis by the Tribunal

Once the Tribunal has been notified, it has 45 working days to:

- a. authorize the transaction;
- b. subordinate the transaction to the compliance with certain requirements to be established; or
- c. cancel the transaction.

The 45-day period starts running from the date the Commission determines that the filing is complete. The Commission has 5 working days to determine the completeness of the filing process. If it determines that further information is needed, the 45-day period shall start running only when the Commission deems that the filing has been completed.

The above mentioned timeframe set forth by Law No. 25,156, has been somewhat modified by Resolution No. 40/01, imposing different timeframes depending on the degree of complexity of the analysis required and the type of form filed. In this respect, the Resolution establishes that should a 1-F Form be filed, the

Commission shall have 15 business days to authorize the transaction or to request the filing of a 2-F Form. In the last case, the Commission has 35 business days from the filing date of the 1-F Form to authorize the transaction or to request the filing of a 3-F Form. Should a 3-F Form be requested, the Commission shall have 45 business days from the filing date of the 1-F Form to approve the transaction. While the information requested from the filing parties is being compiled, the above mentioned timeframes are suspended.

Should the Tribunal not take any decision within the said 45 day-period, the transaction shall be deemed to have been tacitly approved. The decisions taken by the Tribunal consisting of (i) subordinating the transaction to compliance with certain requirements, or (ii) canceling the transaction, may be appealed to the competent Court of Appeals.

V. Consumer's Protection Law

1. Introduction

The "*Ley de Protección al Consumidor*" (Consumer's Protection Law) No. 24,240 (the "CPL") took effect on 10/15/1993. There was no prior regulation concerning consumers' protection. It was 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.

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

The Consumer's Protection Law defines Consumers as those individuals or legal entities that purchase for a price a product or service for its final consumption or its own benefit or that of its family or social group. Those individuals or legal entities that purchase, store, use or consume goods or services or use them in a production, transformation or marketing process 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 that are not directly used 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 of personal property should include the following information:

- description of the goods;
- name and domicile of the seller;
- terms of the warranty
- delivery date and terms of delivery;
- price and payment conditions.

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 or restriction of 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 favourable 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, at its option:

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

5. Enforcement Authority. Investigations

The Industry and Trade Secretariat is the enforcement authority of the CPL.

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

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

- a warning;
- fines ranging from US\$500 to 500,000;
- seizure of the goods which is the subject of the infringement; closing of the store or suspension of the service related to the infringement for up to a 30 day term;
- suspension of up to 5 years in the State's Suppliers' Registry;
- loss of concessions, privileges, special or financial benefits enjoyed by the infringing individual or company.

W. 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, 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 is to appoint a representative with full powers to operate, appear in courts as plaintiff or defendant and deal with the regulatory authority (see Section 3 below). The representative must have special powers to expand the area of activity and allocate clientele to third parties. Directors of foreign companies may be foreign citizens but the majority of the board must reside in the Argentine Republic.

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

2. Operational Requirements

Any entity engaged in insurance activities must fulfil 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 Superintendency from time to time;
- d. if a foreign company, it must file with the Superintendency 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 be engaged;
- f. its activities must be performed on the basis of those insurance plans approved by the Superintendent; and
- g. it must register its articles of incorporation and by-laws with the PCR.

3. Application Authority

The Superintendent is the authority in charge of granting the insurance company's authorization. Any amendments to the by-laws of any entity duly authorized to provide insurance services must also be approved by the Superintendent. The Superintendent 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. The Superintendent's 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 Superintendent;
- 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 the prior authorization from the Superintendent, and (ii) the financing of a debt restructuring plan previously approved by the Superintendent;
- h. to make gratuitous contributions except for charity purposes and with cash declared 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 or a 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 to operate in insurance activities.

6. Loss of Capital

Capital impairments of minimum amounts required must be covered in accordance with a reorganization plan approved by the Superintendency. The reorganization plan may contemplate: (a) capital contributions; (b) merger; (c) management buy-out; (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 automatically cause the company to cease operations until its capital reaches the minimum required.

7. Cancellation of License

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

- a. if transactions do not commence within 6 months after the date of the authorization;
- b. if capital impairments are not cured;
- c. if violations to the by-laws or to the specifications for approval occur;
- d. if dissolution is advisable under the regulations of the Commercial Code;
- e. if the parent company of an Argentine branch is wound up, declared bankrupt or applies for reorganization proceedings or any other similar proceedings; and
- f. if 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 kind 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 Resolution No. 24,805, as amended, enacted by the Superintendency and performed under its supervision and control.

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

Reinsurance companies may conduct its activities in the Argentine Republic either as a local reinsurance company, directly as a registered foreign reinsurer or indirectly through duly authorized local brokers. Different requirements and levels of control and supervision by the Superintendency apply to each of the foregoing alternatives.

9.1 Local Reinsurance Companies

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, national, provincial or municipal, in the same areas for which the authorization to conduct direct insurance business is granted.

The Superintendency 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 become engaged in reinsurance activities;

(iii) it complies with the minimum capital requirement set by the Superintendency; (iv) should the applicant be an Argentine branch or office of a foreign company, if it files the balance sheets for the last 5 (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 the authorization has been granted, the Superintendency shall register the authorized entity with the Registry of Reinsurance Companies.

9.2 Foreign Reinsurance Companies

In addition to the local reinsurance companies, foreign reinsurance entities authorized for that purpose in their own countries may be authorized to engage in reinsurance activities, provided they comply with the following requirements (on a permanent basis):

- a. They prove by means of a certificate issued by the regulatory authority of the country of origin that they are legally organized and authorized to reinsure risks assigned from foreign countries, indicating the commencement date of activities;
- b. They prove through a certificate from the regulatory authority of their country of origin that existing legislation in such countries enables them to assume and fulfil obligations from reinsurance business acquired abroad in freely convertible currency;
- c. They prove by means of a report from external auditors that they have a net worth of at least US\$30 million;
- d. They submit their balance sheets and statements of income for the last 5 fiscal years along with the respective external auditor's opinion thereon;
- e. They appoint an attorney-in-fact with broad administrative and judicial powers, including the power to be summoned to appear in legal proceedings on behalf of the company, who shall establish a legal domicile within the City of Buenos Aires; and
- f. They prove that they are qualified and rated by one of the following international rating companies, as follows: A. M. Best: minimum

qualification A-; Standard & Poor's: Claim Payment Ability, minimum qualification A-; Moody's: financial good standing, A-; Fitch IBCA: Claims Payment Ability, A-.

The Superintendency is always entitled to require additional information and documentation in order to verify the company's net worth or shareholders' equity, and its ability to fulfill the obligations set forth in the reinsurance arrangements.

9.3 Reinsurance through Local Registered Brokers

Argentine insurance companies may enter into reinsurance contracts with foreign reinsurance entities not authorized to act as reinsurers by the Superintendency, provided that an authorized reinsurance broker acts as intermediary in such reinsurance contract.

Insurance entities that execute automatic reinsurance contracts as mentioned above must prove that the foreign reinsurance companies are qualified and rated on the date of execution of each of such reinsurance contracts, by one of the following international rating companies, as follows: A. M. Best: Minimum qualification A-; Standard & Poor's: Claim Payment Ability, minimum qualification A-; Moody's: financial good standing, A-; Fitch IBCA: Claims payment Ability, A-.

Lloyd's of London Syndicates are excluded from the requirements set forth in the preceding paragraph (Lloyd's of London Syndicates are construed as those authorized to operate as such in Lloyd's of London).

X. Telecommunications

1. Regulatory Framework

Telecommunications in the Argentine Republic are regulated by the National Telecommunications Law No. 19,798 of 1972, Executive Orders Nos. 62/90, 1185/90, and 764/2000, and are included in several resolutions issued by the regulatory authorities from time to time.

The regulatory authorities are the Secretariat of Communications (*Secretaría de Comunicaciones*, the “SECOM”), and the National Communications Commission (*Comisión Nacional de Comunicaciones*, the “CNC”). The SECOM depends on the National Executive Branch.

2. Historical Overview

From November 8, 1990, basic telephone service in the Argentine Republic was provided on exclusive basis and for a 10-year term, by two international consortiums; Telefónica de España, which operates under the name *Telefónica de The Argentine Republic S.A.* (“Telefónica”), and *Stet S.p.A.* (Italy) and *France Cable et Radio S.A.* (France), under the name *Telecom The Argentine Republic Stet-France Telecom S.A.* (“Telecom”).

In March 1998, by of Executive Order No.264/98, the Government established the guidelines for a transition to competition period. During such period (which ended in November 2000), the Government granted licenses for the provision of basic telephone service to two new operators, *Compañía de Radiocomunicaciones Móviles S.A.* (“Movicom”), and *Compañía de Teléfonos del Interior S.A.* (“CTI”).

Finally, Executive Order No. 764/200 (the “Executive Order”) was issued on September 5, 2000, and set forth the new regulations applicable to the provision of telecommunications services on November 8, 2000. Such regulations establish an open market for new operators with no restrictions on the number of market players.

However, competition for services that require the use of the radio-electric spectrum is somehow restricted to the availability of the corresponding frequencies.

3. Provision of Telecommunications Services

The Executive Order includes four regulations applicable to: licensing for telecommunications services, interconnection, universal service and administration of the radio-electric spectrum.

3.1 Licensing

Licensing regulations are applicable to all individuals and legal entities interested in providing telecommunications services to third parties. Licensing regulations provides a unique license called “*Licencia Única de Servicios de Telecomunicaciones*”

for all telecommunications services that once obtained, allow their holders to provide all kinds of telecommunication services, either fixed or mobile, wire or wireless, national or international, with or without their own network. However, the service to be finally provided must be previously informed and registered with the SECOM and CNC.

Licenses are granted only by application and after completion of certain technical, legal and commercial requirements.

3.2 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 non-discrimination.

3.3 Universal Service

Universal service regulations create a Trust Fund to be formed by the telecommunications operators' periodical contribution of 1% of their monthly income for provision of services. The resulting amount shall finance the provision of telecommunications service to three groups created by the Executive Order: (i) high costs zones, (ii) specific groups of clients, and (iii) special services.

3.4 Radio-electric Spectrum

Finally, Radio-electric spectrum regulations, states that the radio-electric spectrum (the "Spectrum") is a limited natural resource to be administered by the Federal Government, who shall be empowered to grant, modify or cancel the corresponding use authorizations of the Spectrum. Likewise, these regulations establish a procedure for the application and achievement of authorizations for the use of frequencies.

