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Nowhere can the vicissitudes of business life be experienced more acutely than in the private sector of the petroleum industry of the Argentine Republic. The discovery of oil in Argentina in 1907 precipitated an internal economic and political struggle to develop a national oil policy that has continued to this day.[1] On one side are the extreme economic nationalists who assert that state ownership of all minerals and state monopoly of the petroleum sector are fundamental to Argentina's industrial development and economic self-sufficiency. On the other side are the aristocratic economic liberalists who thrive on an export-based economy, support high importation levels, and encourage local foreign investment. Playing the middle of the field are the less radical economic nationalists who maintain that the state should be involved in energy production, but that private investment and enterprise, under close scrutiny, should be allowed to supplement government efforts.[2] Historically, changes in governmental control among these forces have resulted in dramatic petroleum policy changes, usually in the form of executive decrees, federal intervenors, or new legislation.[3]

For the present time, it is clear the Yacimientos Petroliferos Fiscales (YPF), the official Argentinian state petroleum enter-

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1. C SOLBERG, OIL AND NATIONALISM IN ARGENTINA—A HISTORY 9 (1979); *South America· Cash Troubles Cloud Previous Projections—Argentina*, WORLD OIL, Aug. 15, 1982, at 124 (major revisions in Argentina's petroleum legislation are probable) [hereinafter cited as WORLD OIL].

2. *See* C SOLBERG, *supra* note 1, at 1-7, 13-14, 34-37, 82-86, 116-29, 176-79; UNITED NATIONS CENTRE FOR NATURAL RESOURCES, ENERGY, AND TRANSPORTATION, STATE PETROLEUM ENTERPRISES IN DEVELOPING COUNTRIES 12 (1980) [hereinafter cited as CNRET].

3. *See, e.g*, Decree No. 744/63, Buenos Aires, Argen., Nov. 15, 1963 (annulling oil production controls), *reprinted in* PETROLEUM LEGISLATION CO, SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) A-1 (Supp. IV 1964). The basic hydrocarbons laws now in effect were instituted in 1967 under President Ongania. *See* Memorandum from Minister Krieger Vassena and Secretary Gottelli to President Ongania (June 23, 1967) (submitting Hydrocarbons Law 17,319), *reprinted in* PETROLEUM LEGISLATION CO, SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) B-1, B-24 (Supp. XV 1967) [hereinafter cited as Memorandum of June 23, 1967]; ORGANIZATION OF AMERICAN STATES, GENERAL SECRETARIAT, MINING AND PETROLEUM LEGISLATION IN LATIN AMERICA AND THE CARIBBEAN 19 (1980). President Ongania assumed his executive role in 1966.

prise, is not, by itself, capable of satisfying Argentina's drive for energy self-sufficiency.[4] Although YPF has served as a forerunner and model for state petroleum enterprises in Latin America, labor problems, capital goods shortages, and financial struggles have plagued the company since its inception.[5] Formed in 1922, YPF was not clothed with significant official public authority until 1958.[6] The role of the company has constantly varied based on the prevailing political climate. Further, YPF has never matured to the point of being able to fulfill the country's petroleum needs without assistance from private investors and producers.[7] Currently, YPF is heavily in debt and is not receiving adequate prices for its production. In addition, government taxes are stripping the company of much of its revenues.[8] Thus, based on YPF's history and present status, Argentina will likely have a strong appetite for private petroleum investment and private hydrocarbon-seeking activities for the foreseeable future.[9]

This comment explores the role of the private producer in the Argentine oil and gas industry. This comment does not focus on the political and economic turmoil in Argentina, but rather centers on the key legal arrangements under which a private entity can enter the country and engage in exploration and production activities. In addition, the philosophy and principles underlying the country's petroleum legislation are examined, with special emphasis on the implications for a private petroleum producer considering entering the country to conduct business operations. By examining these two areas of consideration, a private producer can better understand how to conduct hydrocarbon-seeking and -producing activities in Argentina, and will have a framework for anticipating and protecting himself against Argentina's volatile political and economic trends.

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4. C. SOLBERG, *supra* note 1, at 173-75 (charts showing historical production records); WORLD OIL, *supra* note 1.

5. C. SOLBERG, *supra* note 1, at 40-45, 66-69, 98-99, 158-59, 164-65, 172; CNRET, *supra* note 2, at 161; Parker, *Argentina Eyes More Private Oil Work*, OIL & GAS J., Dec. 6, 1982, at 121; WORLD OIL, *supra* note 1.

6. [1958] Law No. 14,773 (Argen.) (nationalization of fields of hydrocarbons), *reprinted in* PETROLEUM LEGISLATION CO., SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) F-1 (Supp. XIV 1967).

7. C. SOLBERG, *supra* note 1, at 173-75 (production charts); WORLD OIL, *supra* note 1.

8. WORLD OIL, *supra* note 1; *see also* C. SOLBERG, *supra* note 1, at 172-73.

9. *See* CNRET, *supra* note 2, at 45; Parker, *supra* note 5; WORLD OIL, *supra* note 1.

I. LEGAL OPPORTUNITIES AVAILABLE TO THE PRIVATE PRODUCER

Argentina's basic petroleum law is Hydrocarbons Law 17,319 of 1967, as amended by Law 21,778 of 1978.[10] Under the provisions of these laws, private companies can participate in exploration and development of hydrocarbons in three distinct ways:

(1) Through "work or service contracts;"[11]
(2) Through a concession-type approach;[12] or
(3) Through "risk contracts" with state enterprises.[13]

This comment focuses on the viability of the second and third types of arrangements. The first type of arrangement has been employed in various forms over the years and can be highly lucrative for private companies.[14] However, service contract transactions did not prove successful, from Argentina's point of view, in promoting sufficient exploration and development activities.[15] Argentina's response to this shortcoming of service contracts has

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10. H. GREEN, ENERGY LAW GUIDE—WORLD PETROLEUM POLICY REPORT § 13, at C-87 (1981).

11. [1967] Hydrocarbons Law No. 17,319, arts. 11, 95 (Argen.), *reprinted in* PETROLEUM LEGISLATION CO., SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) A-4, A-31 (Supp. XIV 1967) [hereinafter cited as Law 17,319].

12. Memorandum of June 23, 1967, *supra* note 3, at 5, 9-10.

13. Decree 2658, Buenos Aires, Argen., Nov. 6, 1978 (Regulations to Risk Contracts, Law 21,778, cl. 1, Apr. 14, 1978), *reprinted in* PETROLEUM LEGISLATION CO., SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) 1 (Supp. LIII 1978) [hereinafter cited as Regulations]; Memorandum to the President of Argentina from Ministers of Justice, Economy & Interior (explaining Law No. 21,778 of Apr. 14, 1978), *reprinted in* PETROLEUM LEGISLATION CO, SOUTH AMERICA—BASIC OIL LAW AND CONCESSION CONTRACTS (ORIGINAL TEXTS) 12 (Supp. LIII 1978) [hereinafter cited as Memorandum of Apr. 14, 1978]. For examples of actual risk contracts, see Contract Resulting from the Bid (Licitacion No. 14-035/79) for the Development and Exploitation of Hydrocarbons of the "Comodoro Rivadavia Coastal Belt" Area—San Jorge Gulf Basin—Argentine Sea, *reprinted in* PETROLEUM LEGISLATION CO, SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) 1 (Supp. LXV 1981) [hereinafter cited as Contract for the "Comodoro Rivadavia Coastal Belt" Area]; Contract Resulting from Bid No. 14-029/79 for the Exploration, Development and Exploitation of Hydrocarbons (Law No. 21,778) in "Llancanelo" Area—Neuquen Basin—Province of Mendoza, *reprinted in* PETROLEUM LEGISLATION CO., SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) 1 (Supp. LXVII 1981) [hereinafter cited as Contract for the "Llancanelo" Area]; Contract Resulting from the Bid (Licitacion No. 14-023/79) for the Exploration, Development and Exploitation of Hydrocarbons (Law No. 21,778) of the "Malargue Sur" Area—Meuquina Basin—Mendoza Province, *reprinted in* PETROLEUM LEGISLATION CO., SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) 1 (Supp. LXIII 1980) [hereinafter cited as Contract for the "Malargue Sur" Area].

14. CNRET, *supra* note 2, at 31; *see also* C. SOLBERG, *supra* note 1, at 168.

15. Memorandum of June 23, 1967, *supra* note 3, at B-5.

been the enactment of its current laws. While these laws still allow for service contract transactions,[16] they emphasize involvement, through risk contracts or concession arrangements, in a three-tier structure consisting of surface prospecting, exploration, and exploitation activities. Each of these phases furnishes the private operator with unique rights and opportunities.

A. Surface Prospecting

Any civilly competent party, including universities and other research organizations, may conduct surface prospecting for the existence of hydrocarbons without being encumbered by the rigidity and burdens of the country's general exploration systems.[17] By obtaining consent from surface owners and a permit from the government prescribing the scope and conditions of the reconnaissance, such a party may engage in "any . . . method appropriate for petroleum exploration."[18] The prospecting can occur both onshore and offshore but it cannot infringe upon areas where exploration and exploitation permits have been awarded, most areas reserved for state enterprises, or areas that have been expressly banned from such activity by the National Executive Power.[19] Although this last restriction gives the state great discretion, the state does have important incentives for agreeing to such studies. First, the exercise of these rights does not generate any legal claim in the prospector to conduct more extensive exploration.[20] Second, the prospector must deliver "the primary data" of his surface inspection to the state.[21] Although the state cannot reveal the data for two years without the gatherer's permission, this restriction on divulgence is greatly weakened by an exception that provides for the release of the data in the event that a permit or concession is awarded in the area studied.[22]

Consequently, if the state (which has the right to process

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16. Law 17,319, *supra* note 11, at A-4, A-31 (arts. 11, 95); Memorandum of June 23, 1967, *supra* note 3, at B-9, B-23.

17. Law 17,319, *supra* note 11, at A-4, A-5 (arts. 14-15); Memorandum of June 23, 1967, *supra* note 3, at B-12.

18. Law 17,319, *supra* note 11, at A-4, A-5 (arts. 14-15). Some methods will necessitate obtaining approval from the state. The state can also inspect and control all of the works involved. *Id.*

19. *Id.* at A-4, A-5 (art. 14).

20. *Id.*

21. *Id.* at A-5 (art. 15).

22. *Id.*

the information, by itself or through the use of third persons, and to use the information for its own purposes) concludes that the property has hydrocarbon potential, it can put out a tender for bids on the property and then release the prospecting information to the party whose bid is selected.[23] Also, the law does not indicate whether the prospecting information is available to state petroleum companies during this two-year period of confidentiality.[24] The result is that the state gains a lot and gives up very little. On the other hand, the prospective producer could gain some very valuable information, but it is of no significant exploratory value to him unless he is prepared to compete for additional rights through a public bid.

B. Exploration

Under Laws 17,319 and 21,778, the most aggressive and potentially profitable petroleum activities are classified into two types: exploration and exploitation.[25] Any given project may involve one or both of these types of activities, but it is not likely to intentionally include only an exploration phase. After all, the exploration phase is simply used to discover commercial deposits of hydrocarbons that justify commencing the exploitation stage. Under Law 17,319, and probably under Law 21,778, exploration rights are awarded only for "possible" zones.[26] These are zones in which the presence of hydrocarbons in commercial quantities has yet to be proven.[27] Properties containing proven reserves of commercially exploitable hydrocarbons are classified as "proven," and only exploitation rights are awarded in such areas.[28] Consequently, a program on "possible" lands involves

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23. *Id.* at A-14 (art. 45). Awards of permits and concessions under Law 17,319 are based on the bid which is "most conducive to the interest of the Nation." *Id.* at A-15 (art. 48).

24. The National Executive Power can enlarge the areas reserved to the state companies. *Id.* at A-4 (art. 11).

25. [1978] Hydrocarbons Law No. 21,778, art. 25 (Argen.), *reprinted in* PETROLEUM LEGISLATION CO., SOUTH AMERICA—BASIC OIL LAWS AND CONCESSION CONTRACTS (ORIGINAL TEXTS) 1, 11 (Supp. LIII 1978) [hereinafter cited as Law 21,778]; Law 17,319, *supra* note 11, at A-5, A-9 (arts. 16, 27).

26. Law 17,319, *supra* note 11, at A-8 (art. 24). Law 21,778 operations are governed by Law 17,319 in any matter that was not modified or specifically provided for under Law 21,778. Law 21,778, *supra* note 25, at 11 (art. 26). For a definition of "possible zones," see Law 17,319, *supra* note 11, at A-4 (art. 10).

27. Law 17,319, *supra* note 11, at A-4 (art. 10).

28. *See id.* (arts. 24, 29); Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 2 (art. 1).

more risk and entails both an exploration phase and, if hydrocarbons are discovered in commercial quantities, an exploitation phase. A plan to develop a proven area presents less risk and only involves an exploitation phase.[29]

The purpose of the exploration phase is to both require and authorize the private operator to search for commercial deposits within the bid area. This is a weeding out period for the state because at the end of the exploration period, any property that has not been explored or proven worthy of exploitation is relinquished to the state.[30] Activities during this period are conducted pursuant to work and investment commitments made in the bid.[31]

Under Law 17,319 an exploration permit confers exclusive rights to search for hydrocarbons within the permit area during the period specified.[32] An exploration permit also authorizes the holder to undertake all works "conducive to the discovery of hydrocarbons," including surface prospection, exploratory drilling, and construction of transportation, communication, and other necessary facilities.[33] Inherent in each exploration permit is an exclusive concession of the exploitation of any and all hydrocarbon deposits found within the permit area.[34] Within indicated time periods and under threat of specified penalties, a permit holder that discovers hydrocarbons must announce (1) the discovery of the hydrocarbons, (2) if the discovered deposit is commercially exploitable, and (3) his intentions concerning ob-

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29. *See, e.g.*, Law 17,319, *supra* note 11, at A-9 (art. 29, concessions on proven lands); Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 2 (art. 1) (purpose of the contract is development and exploitation with no exploration phase included).

30. Law 17,319, *supra* note 11, at A-8, A-9 (art. 26); Regulations, *supra* note 13, at 14-15 (cls. 10.1, 10.4). As an additional incentive to encourage prompt exploration, the exploration period is divided into smaller periods of time and, at the end of each small period, a minimum of 50% of all lands not converted to exploitation parcels or previously relinquished are returned to the state. Law 17,319, *supra* note 11, at A-8, A-9 (art. 6); Regulations, *supra* note 13, at 2, 14 (cls. 2.9, 10.1).

31. Law 21,778, *supra* note 25, at 3-5 (art. 9); Law 17,319, *supra* note 11, at A-6, A-7, A-15 (arts. 20, 47, 48).

32. Law 17,319, *supra* note 11, at A-5 (art. 16). The basic unit of an exploration permit is 100 square kilometers and a single permit cannot exceed an aggregate of 100 units for an onshore permit or 150 units for an offshore permit. *Id.* at A-8 (arts. 24, 25).

33. Law 17,319, *supra* note 11, at A-6 (art. 19); Memorandum of June 23, 1967, *supra* note 3, at B-13.

34. Law 17,319, *supra* note 11, at A-6 (art. 17); Memorandum of June 23, 1967, *supra* note 3, at B-13.

taining a concession and exploitation.[35] Thus, the conclusion that commercially exploitable hydrocarbons have been discovered moves the Law 17,319 operator into the exploitation phase for that particular deposit. The awarding of an exploitation concession, however, does not terminate the permit holder's exploration rights for remaining lands not converted to a concession. As these residual lands are explored, they can enter the concession phase or be relinquished to the state. At the end of the exploration phase, all lands within the permit area that have not been converted into an exploitation concession must be given up.[36]

The exploration procedure under Law 21,778 closely resembles that of Law 17,319. The regulations to Law 21,778 provide that contracted works shall be carried out in two stages, one for exploration and the other for development and production.[37] The 1980 Unionoil International Exploration Company, Ltd./Inalruco S.A. Petrolera Risk Contract explains that during the exploration phase, the "Contractor must determine and notify . . . Y.P.F. whether . . . the . . . field . . . is considered commercially exploitable."[38] The regulations also define (for investment and work commitment purposes) an exploration well as one drilled where no productive well has been previously drilled, or where a stratigraphic trap is sought, or, in some cases, where the purpose of drilling a well or wells is to delineate a field. In addition to drilling wells, a Law 21,778 contractor is obligated to carry out a program of "exploration works" that will generate locations for drilling exploratory wells.[39] A Law 21,778 contractor who makes a discovery must present YPF with a plan for determining if the "deposit is commercial or not or if it can become one when exploited along with other discoveries."[40] This moves the contractor into the exploitation phase for that deposit.

Unlike Law 17,319, Law 21,778 does not set out stringent penalties for failure to announce a discovery or for concealment

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35. Law 17,319, *supra* note 11, at A-7, A-8 (arts. 21-22); Memorandum of June 23, 1967, *supra* note 3, at B-14.

36. Law 17,319, *supra* note 11, at A-7 to A-9 (arts. 22-23, 26); Memorandum of June 23, 1967, *supra* note 3, at B-14.

37. Regulations, *supra* note 13, at 4 (cl. 3).

38. Contract for the "Llancanelo" Area, *supra* note 13.

39. Regulations, *supra* note 13, at 3-4 (cls. 2.13, 11.4).

40. *Id.* at 5-6 (cl. 3.2.1); *see also* Contract for the "Malargue Sur" Area, *supra* note 13, at 6-7 (art. 3.2.1) (maximum term for such a program is twenty-four months).

of a commercially exploitable field. It is possible that the provisions of Law 17,319 which provide for penalties also apply to Law 21,778. However, another explanation for the lack of specified penalties in Law 21,778 may be the fact that a Law 21,778 producer must sell all of his production, and provide extensive information, to state oil companies. Consequently, the state is more likely to know about a Law 21,778 discovery.[41] In contrast, a Law 17,319 operator has free marketing opportunities and thus more opportunities and incentives to conceal his discoveries.[42] The Law 21,778 exploration period terminates, like the Law 17,319 exploration period, with the relinquishment of lands not committed to exploitation lots and the cessation of the right to drill additional exploration wells.[43]

C. Exploitation

The exploitation phase is designed to allow the private operator to reap the benefits of his exploration discoveries. Pursuant to work plans submitted to the state, the operator tries to realize the full potential of the deposits discovered, hopefully within the time period allotted. A Law 17,319 exploitation concession confers an exclusive right to exploit any hydrocarbon fields existing within the area specified by the concession during the established time period.[44] Law 17,319 obligates the concessionaire to seek for and produce the maximum production that is consistent with economic and conservation concepts. Also, the operator must strive to develop the entire concession acreage.[45] To assist the Law 17,319 producer in doing this, the statute gives the concessionaire the right to obtain a nonexclusive transportation concession, and various other ancillary privileges such as the right to build treating and refining plants, communication systems, and buildings.[46]

Under Law 21,778, the basic unit for production and devel-

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41. Law 21,778, *supra* note 25, at 1, 5 (art. 4, 9(h)); Regulations, *supra* note 13, at 20-22 (cls. 1.0, 15.0); *see also* Contract for the "Malargue Sur" Area, *supra* note 13, at 15-16, 51-54 (art. 9, Annex IV).

42. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-5, B-10, B-11.

43. Law 21,778, *supra* note 25, at 4 (art. 9(d)); Regulations, *supra* note 13, at 14-15 (cls. 10.1, 10.2, 10.4).

44. Law 17,319, *supra* note 11, at A-9, A-11 (arts. 27, 33-34).

45. *Id.* at A-10 (art. 31).

46. *Id.* at A-9, A-10 (arts. 28, 30); Memorandum of June 23, 1967, *supra* note 3, at B-15.

opment is the "exploitation lot." These lots are defined as "the fraction within the area [originally] being bidded on in which the commercially exploitable hydrocarbons are localized."[47] The Law 21,778 contractor agrees to promptly delineate the boundaries of the field[48] and to employ the most "reasonable and efficient techniques" in an effort to "obtain [the] maximum production of hydrocarbons compatible with the appropriate exploitation of same."[49]

1. Direct exploitation activities

Under both Law 17,319 and Law 21,778, there are two paths that lead to exploitation projects. The first is by way of an agreement to enter directly into exploitation activities without a preliminary exploration period.[50] In this situation, a private party is concerned with (1) the land available to him, (2) the time limitations on his rights, (3) the work and investment commitments he is obligated to undertake, and (4) the fiscal regime he is subject to during the life of his concession.

The state determines both the locations and the size of the properties that are available under Law 17,319 and Law 21,778.[51] Although only Law 17,319 specifies maximum acreages for an exploitation concession, it does not appear that the size of an exploitation parcel is a negotiable matter, especially when the original agreement is to perform exploitation operations only. A private entity interested in a particular area may submit a proposal concerning that area. If the state decides that such a recommendation should, in the best interests of the nation, be followed, then a tender for bids will be put out on that area. The author of the proposal will be given preference only if his bid offer is equal to the best of all the offers made.[52]

In addition to land constraints, the rights of private petroleum producers are of limited duration under the Argentine

47. Regulations, *supra* note 13, at 2, 5 (cls. 2.8, 3.2).

48. *Id.* at 19 (cl. 13.10) (six month period allotted).

49. Law 21,778, *supra* note 25, at 2 (art. 6(a)). Law 21,778 does not mention ancillary privileges so Law 17,319 rights should apply. Law 21,778, *supra* note 25, at 11 (art. 26) (matters not modified or expressly provided for in Law 21,778 are covered by Law 17,319).

50. Law 17,319, *supra* note 11, at A-9 (art. 29); Memorandum of June 23, 1967, *supra* note 3, at A-14.

51. Law 21,778, *supra* note 25, at 3-5 (art. 9); Law 17,319, *supra* note 11, at A-3 (art. 9).

52. Law 17,319, *supra* note 11, at A-14, A-15 (art. 46).

laws.[53] When these lands revert to the state, operating equipment, fixed installations, and, in some cases, mobile accouterments are also transferred free of encumbrance to the state.[54] A private operator must assure himself that, within the time frame allotted, the economics will be favorable to him based on how many wells will be drilled, expected production rates and productive lives of wells, and projected percentages of wells that will be dry.

The operator will also be required to make work and investment commitments for achieving his exploitation goals. Law 17,319 provides that a concessionaire shall be "bound to make such investments as may be necessary, within reasonable periods of time, for the execution of the works required for the development of the entire acreage comprised in the area of his concession . . . ."[55] Law 21,778 requires a contractor to submit his timetable and investment plans to YPF.[56] Except where force majeure, acts of God, or certain technical difficulties intervene, failure to meet Law 17,319 or Law 21,778 commitments can result in penalization of the private entity including damages or cancellation of the agreement.[57]

Law 17,319 and Law 21,778 each have their own fiscal regime (i.e., taxes, rents, royalties) governing operations conducted under their provisions. The Law 17,319 fiscal regime tries to aid a private entity in preparing for a permit or concession and in realizing those plans. Law 17,319 does this by identifying in advance, by type and amount, all of the financial obligations that a permit holder or concessionaire is liable for during the term of the agreement.[58] These obligations include payment of:

(1) All provincial and municipal taxes extant on the date of the award. Governing bodies cannot levy new taxes or increase preexisting taxes except when the changed rates represent a defrayment of costs of services rendered or

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53. Memorandum of Apr. 14, 1978, *supra* note 13, at 14; Memorandum of June 23, 1967, *supra* note 3, at B-10.

54. Law 21,778, *supra* note 25, at 4 (art. 9(e)); Law 17,319, *supra* note 11, at A-11, A-12, A-29 (arts. 37, 85); Regulations, *supra* note 13, at 17 (cl. 12); Memorandum of June 23, 1967, *supra* note 3, at B-22; *see also* Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 8 (art. 5).

55. Law 17,319, *supra* note 11, at A-10 (art. 31).

56. Regulations, *supra* note 13, at 21 (cl. 15.3).

57. Law 21,778, *supra* note 25, at 4-5 (art. 9(g)); Law 17,319, *supra* note 11, at A-27 to A-30 (arts. 80, 87-88).

58. Memorandum of June 23, 1967, *supra* note 3, at B-17.

when the tax change constitutes a contribution toward improvements or a general increase of taxes.[59]

(2) All national tributes assessed on imported items, exchange surcharges, and capital gains taxes. Aside from these, and the other taxes set forth below, the operator is exempt from all other national taxation (as to activities related to his permit or concession) except for adjustments which defray costs of services provided or contributed toward improvements or where the entity has assumed responsibility for a third party's tax liability.[60]

(3) A special income tax of 55% of the operator's net profits. The statute prescribes a formula for computing net profits.[61]

(4) A progressive annual surface tax during the exploration period.[62]

(5) An annual surface tax during the exploitation period of 20,000 pesos per square kilometer or fraction thereof.[63]

(6) A 12% royalty on liquid hydrocarbons and natural gas that the National Executive Power can reduce by 5% if production conditions merit such a decrease.[64]

(7) Any special benefits (e.g., bonuses, deferred or cumulative payments) that the private party committed to in the bidding process.[65]

(8) Additionally, any hydrocarbons lost through the fault or negligence of the operator shall be included as production in making these calculations.[66]

This scheme is a benevolent effort by Argentina to be fair to private entities. The exceptions provided for in (1) and (2), however, seem to open wide gaps that minimize the restrictions laid on new or increased taxes; and, unfortunately, the guaranty of a stable tax regime does not encompass a guaranty of a stable economy to operate in.

Law 21,778 approaches the tax treatment of its contractors from a different angle than does Law 17,319. Rather than prescribing an intentionally stagnant fiscal regime, Law 21,778 per-

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59. Law 17,319, *supra* note 11, at A-17 (art. 56(a)).

60. *Id.* at A-17, A-18 (art. 56(b)). Shareholders and direct pecuniary beneficiaries also come under this tax umbrella. *Id.* at A-20, A-21 (art. 56(d)).

61. *Id.* at A-18 (art. 56(c)).

62. *Id.* at A-21 (art. 57(a)).

63. *Id.* (art. 58).

64. *Id.* at A-21, A-22 (arts. 59, 62).

65. *Id.* at A-15, A-23 (arts. 47, 64).

66. *Id.* at A-23 (art. 65).

mits the use of price escalator clauses in risk contracts to adjust prices paid to operators for their production in response to "the precise incidence" of tax fluctuations.[67] However, similar to the provisions of Law 17,319, "service rates and betterment taxes" are excluded.[68] Law 21,778 contractors must abide by Argentina's "tax regulations of general applicability"[69] with two options concerning a modified depreciation rule and an option to update tax losses based on the general level of the wholesalers price index.[70] The nation's stamp tax assessment is based on the contractor's investment commitment in the risk contract and is payable over a term that commences on the date the contractor is notified of the decree approving the risk contract.[71]

An annual surface fee (per square kilometer or fraction thereof) is set in the call for bids. The amount of the fee relates to the characteristics of the particular bid area.[72] A special 100% deduction is granted for certain investments that underwrite the stock of Argentine companies engaged in risk contracting.[73] Goods, special tools, parts, components, and some spares and accessories are exempted from import duties upon entry into the country and from export duties upon leaving Argentina when the contract expires.[74] Investments made by contractors are not subject to certain foreign investment regulations and YPF is liable for the 12% royalty on production that is payable to the state.[75] Obviously, a more thorough knowledge of the country's general tax structure is needed before potential risk contractors should attempt interpreting these provisions.

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67. Law 21,778, *supra* note 25, at 7 (art. 15); Regulations, *supra* note 13, at 24-25 (cl. 17.2).

68. Law 21,778, *supra* note 25, at 7 (art. 15); Regulations, *supra* note 13, at 24-25 (cl. 17.2).

69. Law 21,778, *supra* note 25, at 6-7, 10 (arts. 14, 20).

70. Law 21,778, *supra* note 25, at 6-7 (arts. 14(a), 14(b)); Regulations, *supra* note 13, at 24 (cls. 17.1, 17.1(a), 17.1(b)). For an example of tax regimes in actual risk contracts, see Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 27 (art. 13).

71. Law 21,778, *supra* note 25, at 7 (art. 16).

72. *Id.* (art. 17); Regulations, *supra* note 13, at 25 (cl. 17.4).

73. Law 21,778, *supra* note 25, at 8-9 (art. 18); Memorandum of Apr. 14, 1978, *supra* note 13, at 14-15.

74. Law 21,778, *supra* note 25, at 9-10 (art. 19) (compensation for services is expected from this exemption; there are limitations on the sale and movement of these imported goods); Memorandum of Apr. 14, 1978, *supra* note 13, at 15.

75. Law 21,778, *supra* note 25, at 10 (art. 23); Regulations, *supra* note 13, at 25 (cl. 17.3); Memorandum of Apr. 14, 1978, *supra* note 13, at 15-16.

2. Exploitation following exploration activities

The second way a private producer can enter into an exploitation phase is through exploratory discoveries that precipitate conversions of exploration lands into exploitation lands.[76] For a Law 17,319 exploration permit holder, this is triggered when "the permit holder through the application of approved technical criteria shall have determined the existence of commercially exploitable hydrocarbons."[77] When this vague standard has been met, the permit holder must declare his plans concerning an exploitation concession.[78] Then, a concession will be awarded and the new concessionaire must submit his work and investment commitments for the exploitation phase for approval by the state.[79] A Law 17,319 concessionaire has a duty to delimit the productive area (which the concession boundaries will conform to) as promptly as possible.[80] This is likely to be a natural goal of the concessionaire anyway owing to the impermanent nature of his rights.

The Law 21,778 approach to exploitation ensuing from exploration shows more oilfield sense than the Law 17,319 provisions do for such a conversion by laying out a more extensive and practical procedure for the changeover. When a Law 21,778 contractor discovers a deposit of hydrocarbons, he begins the transition into exploitation by announcing to YPF his plans for determining if the accumulation has, by itself or in combination with other discoveries, commercial potential.[81] The pursuance of such a program will then result in one of three conclusions concerning the investigated hydrocarbon traps: it is commercial, it is not commercial, or its commerciality is still unclear.

If a deposit is labelled noncommercial, the contractor must immediately release all areas coinciding with the trap that was tested.[82] However, if the operator is hesitant to label a property

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76. Law 17,319, *supra* note 11, at A-6, A-9 (arts. 17, 29).

77. *Id.* at A-7, A-8 (art. 22).

78. *Id.* Indeed, an exploration permit holder who makes a discovery cannot proceed with field exploitation until he has committed to opt for an exploitation concession. *Id.* at A-7 (art. 21).

79. *Id.* at A-10 (art. 32).

80. *Id.* at A-10, A-11 (art. 33).

81. Regulations, *supra* note 13, at 5-6 (cl. 3.2.1); *see also* Contract for the "Llancanelo" Area, *supra* note 13, at 7-8 (art. 3.2.1) (contractor has up to twenty-four months to carry out its program for determining commerciality).

82. Regulations, *supra* note 13, at 6 (cl. 3.2.3); *see also* Contract for the "Malargue Sur" Area, *supra* note 13, at 7 (art. 3.2.3).

noncommercial and, at the same time, is not convinced of the prospect's commerciality (e.g., it could be commercial if exploited with other discoveries or if prices were to increase slightly), the contractor is permitted to postpone the declaration of his conclusion. The maximum permissible length of this postponement will be set out in a "document of particular conditions," but in no event shall it extend beyond the end of the exploitation stage time period.[83]

If a deposit is determined to be commercial, then the contractor must submit all of his geologic and engineering information to YPF along with a plan for full exploitation.[84] Law 21,778's enactment was specifically aimed at encouraging the discovery and development of Argentina's offshore reserves.[85] Accordingly, Law 21,778 has a unique provision. When an offshore gas field is discovered, the exploitation period may be suspended for up to ten years to await the development of a market and transportation facilities for the gas.[86]

An operator who commences exploitation as a result of conversion from exploration must still concern himself with the applicable fiscal regime, time periods limiting his rights, and work and investment commitments as described above. The quantity of land available to him will be based largely on the initiative he takes and his success in finding exploitable fields. Both Law 17,319 and Law 21,778, therefore, provide a legal mechanism for converting new discoveries into production and development programs, but the Law 21,778 system is clearer and better calculated to conform to oilfield practices.

II. Underlying Philosophy and Principles

This section analyzes the underlying principles of Argentina's petroleum laws and the impact those principles have on private producers. Two of these principles, state dominance of the petroleum industry and Argentina's need for private activity in the petroleum industry, are in constant tension. The dynamics of the conflict between these principles help to explain changes in the country's petroleum policy. Another one of the

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83. Regulations, *supra* note 13, at 6 (cl. 3.2.4).

84. Regulations, *supra* note 13, at 6, 21 (cls. 3.2.2, 15.3); *see also* Contract for the "Malargue Sur" Area, *supra* note 13, at 7, 16 (arts. 3.2.2, 9.3).

85. Memorandum of Apr. 14, 1978, *supra* note 13, at 13, 16.

86. Law 21,778, *supra* note 25, at 4 (art. 9(e)).

fundamental principles, private responsibility for the mining risks of exploration and exploitation, does not present a new concept for private producing entities. The final principle deals with ownership of the hydrocarbons that are produced and the consequences of ownership or nonownership to a private entity. After studying these essential principles, a private producer will recognize and understand the general concerns he should have about the Argentine petroleum industry.

A. State Dominance vs. Dependence on Private Investment and Activity

"[I]ndespensable [sic] . . . control of the state over all aspects involved in"[87] the exploration, exploitation, transportation, and marketing of hydrocarbons characterizes Argentina's petroleum legislation.[88] Undergirding this philosophy of state dominance is Law 17,319's pronouncements that the nation's hydrocarbons are "inalienable and imprescriptible assets" of the state.[89] The National Executive Power controls the legal mechanisms of the petroleum industry by making major policy decisions under Law 17,319 and by approving all risk contracts under Law 21,778.[90] The Secretary of Energy assists the National Executive Power by applying and executing these laws.[91] "State companies" are the "essential agents" for the state in its petroleum activities and these companies play a dominant role in the accomplishment of the national objectives.[92] Strategic proven and prospective hydrocarbon lands are reserved for the sole dominion of the state companies to aid them in fulfilling their assigned functions.[93]

The National Executive Power sets its policies in accordance with the express national objective of meeting the coun-

87. Memorandum of June 23, 1967, *supra* note 3, at B-1.

88. Memorandum of Apr. 14, 1978, *supra* note 13, at 13; Memorandum of June 23, 1967, *supra* note 3, at B-4.

89. Law 17,319, *supra* note 11, at A-1 (art. 1). This approach solves a multiplicity of jurisdictions problem that has plagued the development of a national policy, but it also raises constitutional issues concerning ownership and procedural jurisdiction over hydrocarbon reserves. These issues have been hotly debated for many years. *See id.* at A-4 (art. 12) (provinces to participate equally with the national government in provincial production).

90. Law 21,778, *supra* note 25, at 5-6 (arts. 12, 13); Law 17,319, *supra* note 11, at A-1, A-32 (arts. 3, 98).

91. Law 17,319, *supra* note 11, at A-26, A-32 (arts. 75, 97).

92. *Id.* at A-4, A-30 (arts. 11, 91).

93. *Id.*

try's petroleum needs from indigenous production.[94] Law 17,319 was directed toward accomplishing this goal through the granting of exploitation concessions. When it became evident that Law 17,319 alone would not meet this target,[95] Law 21,778 was enacted to stimulate further activity by allowing the state companies to enter into risk contracts with private entities.[96] These nonpublic entities were to assist state companies in developing those lands reserved to them, especially offshore prospects.[97]

Another basic theme, partially expressed and partially implied, of Argentina's petroleum laws is the country's great need for the economic and technical assistance that private investment and other private involvement provide. In the petroleum sector itself, private entities can supply the tremendous financial resources required for petroleum exploration, particularly in offshore projects.[98] Private companies also have technical abilities that the state needs.[99] Both Law 17,319 and Law 21,778[100] require private operators that want to participate in Argentina's petroleum industry to possess the technical competence and financial resources necessary to perform the works that will be required of them. By surpassing the "dubious efficiency (resulting from) . . . subordinating the extraction of hydrocarbons to the technical and economic resources of the state,"[101] a petroleum industry buoyed up by private money and ingenuity gives desperately needed support to the country's quest for "economic expansion on reasonable technical and economic bases."[102] Aside from boosting the petroleum industry, private participation is expected to stimulate local industry and increase employment.[103] Despite "the acknowledged competence of Argentine technical

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94. *Id.* at A-1 (art. 2); Memorandum of June 23, 1967, *supra* note 3, at B-8 to B-10.

95. CNRET, *supra* note 2, at 45.

96. Regulations, *supra* note 13, at 1 (cl. 1); Memorandum of Apr. 14, 1978, *supra* note 13, at 12.

97. Memorandum of Apr. 14, 1978, *supra* note 13, at 12-13, 16; WORLD OIL, *supra* note 1, at 125-32.

98. Memorandum of Apr. 14, 1978, *supra* note 13, at 13; Memorandum of June 23, 1967, *supra* note 3, at B-4; CNRET, *supra* note 2, at 45.

99. Law 21,778, *supra* note 25, at 1 (art. 2).

100. *Id.*; Law 17,319, *supra* note 11, at A-1, A-2 (art. 5); Regulations, *supra* note 13, at 1, 8-9 (cls. 1, 5.2); Memorandum of June 23, 1967, *supra* note 3, at B-13.

101. Memorandum of June 23, 1967, *supra* note 3, at B-2.

102. *Id.* at B-1.

103. Memorandum of Apr. 14, 1978, *supra* note 13, at 16; Memorandum of June 23, 1967, *supra* note 3, at B-4.

personnel and labourers,"[104] a private producer is required under both Law 17,319 and Law 21,778 to employ a high percentage of Argentinians.[105]

Even though the Argentine petroleum legislation is founded on the principle of state control, this principle is in constant tension with and must be balanced against Argentina's genuine need for private involvement in accomplishing its petroleum and economic goals. Unfortunately, Argentina's administration of its hydrocarbon laws sometimes does not reflect the country's substantial need for private involvement and, when this happens, both Argentina and the private operators suffer.[106]

The exact impact this struggle between state dominance of natural resource development and reliance upon private investment and technology will have on the private operator is difficult to anticipate. Some general observations would be more appropriate. A private producer planning to operate in Argentina for the entire duration of a risk contract or concession agreement should expect to experience all ranges of the spectrum of government dominance.[107] An initial indicator of the tenor of the Argentine government at a particular time is the political ideology of the governing authorities. Economic nationalist leaders favor energy self-sufficiency spawned by active government involvement. Government involvement can range from tariff protection and an infrastructure base designed to stimulate private Argentine exploration and production efforts, to complete state dominance of the petroleum industry. Economic liberalist leaders, on the other hand, welcome foreign investment and involvement in petroleum-seeking and -producing activities. Economic liberalism in Argentina is export based and is founded on cordial foreign relations and interchange.

These philosophical labels are of limited value, however, because Argentine politicians do not always remain loyal, at least in practice, to their ideological classifications. Still, even though theoretical bases are of limited value in predicting how Argen-

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104. Memorandum of June 23, 1967, *supra* note 3, at B-21.

105. Law 17,319, *supra* note 11, at A-25 (art. 4); Regulations, *supra* note 13, at 19-20 (cl. 13.12).

106. Parker, *supra* note 5; WORLD OIL, *supra* note 1.

107. This is exemplified by the varying treatment afforded to Standard Oil Company of New Jersey and its subsidiaries. *See generally* C. SOLBERG, *supra* note 1. *See also* R. MIKESELL, W. BARTSCH, J. BEHRMAN, P. CHURCH, G. EDWARDS, H. GOMEZ, W. HARRIS, M. MAMALAKIS, D. WELLS, M. WIONCZEK & J. ZINSER, FOREIGN INVESTMENT IN THE PETROLEUM AND MINERAL INDUSTRIES 157-88 (1971).

tine rulers will direct the petroleum industry, it is important to monitor the country's political development as effectively as possible because political developments may prove to be the single most critical factor in the progress or lack of progress of Argentina's petroleum industry.[108]

In many ways, the Argentine conflict between state control of and private contribution to the oil and gas industry typifies the petroleum technology transfer battle that developing countries have waged with private oil companies.[109] Hydrocarbon exploration and exploitation activities are markedly enhanced by technological abilities and advancements. Historically, private multinational corporations have provided the technology required for worldwide petroleum operations. Naturally, sovereign countries want to control the use and depletion of their indigenous natural resources. Hence, as in Argentina, an ensuing struggle sets the governments of developing countries (that want to regulate the development of their own energy resources) against the private oil companies (that are seeking to fulfill their own ends) possessing the technology needed for resource utilization. Initially, this confrontation produced concession arrangements giving wide latitude to the oil companies and providing limited financial benefits but no technological benefits to the host countries.[110] Such concession arrangements were present under early Argentine oil laws.[111] Gradually, developing countries began using petroleum contracts and other means to develop petroleum technology among their own industries and labor markets.[112]

Provisions under Law 17,319 and Law 21,778 that require the hiring and training of Argentine nationals, the delivery of oilfield information to the state, and the reversion of production equipment and facilities to the state are examples of Argentine efforts to acquire technology.[113] Additionally, Argentina has a

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108. At least one business advisor feels that energy progress is closely related to politics. *See* Wanniski, *Energy In Abundance*, LANDMAN, Jan. 1983, at 7-12.

109. *See generally* Zakariya, *Transfer of Technology Under Petroleum Development Contracts*, 16 J. WORLD TRADE L. 207 (1982).

110. *See* CNRET, *supra* note 2, at 109-10, 152; Zakariya, *supra* note 109, at 211.

111. *See* Memorandum of June 23, 1967, *supra* note 3, at B-1, B-2; C. SOLBERG, *supra* note 1, at 14-15.

112. *See* Zakariya, *supra* note 109, at 210-22.

113. Law 21,778, *supra* note 25, at 4, 5 (arts. 9(e), 9(h)); Law 17,319, *supra* note 11, at A-11, A-12, A-24, A-25 (arts. 15, 37, 70, 71); *see also* Zakariya, *supra* note 109, at 211-15.

petroleum technology training institute and belongs to ARPEL, a Latin American association of state petroleum enterprises.[114] A complete transfer of technology

> lies in the ability of the developing country to purchase or hire directly the most advanced technical means of petroleum exploration and development, if and when it so wishes, at a reasonable price. It also lies *above all*, in developing the mental skills of its citizens to utilize these technical means effectively, alone if they choose to do so.[115]

However, a full technology transfer is closely tied to economic and industrial development in the developing country.[116] Argentina's shortcomings in these areas make it probable that a complete technological transfer is a distant dream for Argentina, but it is likely that private operators in the country will be faced with demands from the government to assist this transfer of technology.

Finally, in understanding the state dominance versus private participation conflict, the concepts of political ideology and technology transfer must be set afloat on the underlying sea of social, economic, and political problems that plague Argentina. As a developing country, Argentina seems like a child that is dissatisfied with what it has and yet does not know what it wants. For the oil industry, the result of Argentina's uneasiness is a constantly changing oil policy.[117] The country would like to pay fair oil prices to producers, yet economic problems make this difficult. Socially and politically, some forces in Argentina would like to achieve energy self-sufficiency, but the country lacks the financial and technological ability to do so.[118] The consequences to the private operator are uncertainty and instability in the petroleum industry.

B. Risk and Ownership

Under both Law 17,319 and Law 21,778, the private opera-

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114. *See* CNRET, *supra* note 2, at 82-91; *see also* Zakariya, *supra* note 109, at 208, 220.

115. Zakariya, *supra* note 109, at 219.

116. *Id.* at 222.

117. *See* C. SOLBERG, *supra* note 1, at 156-76. Law 21,778 was enacted in 1978 and, by 1982, the country was considering new major changes in its oil legislation. *See generally* WORLD OIL, *supra* note 1.

118. *See* Law 17,319, *supra* note 11, at A-1 (art. 3); Memorandum of June 23, 1967, *supra* note 3, at A-8; C. SOLBERG, *supra* note 1, at 172-77; CNRET, *supra* note 2, at 45.

tor assumes all "hazards defined as mining risk."[119] Producers operating under Law 17,319 own the hydrocarbons they produce, including the right to transport, refine, and market their production.[120] This system is designed to provide "substantial incentives" by opening up the vistas of vertical integration (e.g., marketing, exportation) to nonpublic entities.[121] The exercise of nonproduction rights, however, is subject to regulation by the National Executive Power. Some initial regulations are set forth in Law 17,319. For example, liquid hydrocarbons can be sold only in domestic markets until the objective of petroleum self-sufficiency is met.[122] In addition, all natural gas produced in Argentina is subject to a first purchase option granted to the "State-owned enterprise responsible for the public service of gas distribution."[123]

In contrast to Law 17,319, companies contracting under Law 21,778 receive no legal rights under applicable mining laws, "nor will they have ownership of the hydrocarbons so obtained."[124] However, if domestic needs are satisfied from indigenous production and an adequate supply of reserves has been accumulated, the contractor may receive payment in kind.[125] As a limitation on this practice, however, YPF can restrict payment in kind to crudes so that even when national requirements are met, natural and liquified gas may not be available in kind.[126]

In the simplest sense, the procedures under Law 17,319 and Law 21,778 are very similar and, from a producer's viewpoint, the ownership distinctions between the laws are not crucial. Both laws prescribe a system mandating delivery of a specified

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119. Law 21,778, *supra* note 25, at 1 (art. 2); Law 17,319, *supra* note 11, at A-1, A-2 (art. 5).

120. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-5, B-10, B-11.

121. Memorandum of June 23, 1967, *supra* note 3, at B-5, B-15.

122. Law 17,319, *supra* note 11, at B-2, B-3 (art. 6). This limitation is subject to exceptions justified on technical grounds. *Id.*; Memorandum of June 23, 1967, *supra* note 3, at B-10. The Executive Power may prescribe rules which assure an equitable and rational participation by all companies in the domestic market. Law 17,319, *supra* note 11, at B-2, B-3 (art. 6).

123. Law 17,319, *supra* note 11, at A-3, B-2 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-11 (operators can consume hydrocarbons as needed for their operations).

124. Law 21,778, *supra* note 25, at 1 (art. 3); Memorandum of Apr. 14, 1978, *supra* note 13, at 13.

125. Law 21,778, *supra* note 25, at 1 (art. 4); Regulations, *supra* note 13, at 1, 23 (cls. 1, 16.2.3); Memorandum of Apr. 14, 1978, *supra* note 13, at 13, 14.

126. Regulations, *supra* note 13, at 23 (cl. 16.2.3).

amount of production into internal markets, after which the producer may dispose of any excess output as he chooses.[127] Within these basic procedural frameworks, however, differences between the Law 21,778 operator and the Law 17,319 concessionaire do emerge. These disparities, which are largely rooted in ownership rights, can be recognized and managed by the producer by studying the price the producer can receive for his production and the likelihood that the producer will have an available market for all of this production. Additionally, the producer must consider the quantity of his production over which he will have exportation rights. These factors, and not ownership differences, become critical in the producer's analysis of his opportunities for profitable operations in Argentina.

In evaluating the prices available for his production, a producer interested in exploring in Argentina should ascertain the relative prices obtainable under Law 17,319 and Law 21,778 transactions. Also, since the producer is committed to serving local markets until domestic needs are met, the producer must compare prices available in Argentina to world oil prices.[128] For liquid hydrocarbons, Law 17,319 concessionaires have more price latitude than Law 21,778 contractors because concessionaires have transportation and marketing rights to their production.[129] Law 21,778 operators are obligated, until payment in kind is allowed, to sell their output to "the state company,"[130] whereas the only significant restriction put on crude prices by Law 17,319 is that the National Executive Power might set prices.[131] However, the statute tries to temper this possibility by assuring that "reasonable profits" will be attainable and that even if prices are set by the National Executive Power, they will be equal to those established for the state oil company and will not be lower than those prevailing for imported crudes of similar

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127. Law 17,319, *supra* note 11, at B-2, B-3 (art. 6) (operator must obtain a commercially reasonable price for exported crude).

128. *See Argentine Contract Talks Hit Snags*, OIL & GAS J., Jan. 10, 1983, at 44. Sagging prices have proven to be a major flaw in the Argentine oil industry and, combined with soaring inflation and political instability, have resulted in a downward production trend in the country. Enright, *World Oil Flow, Refining Capacity Down Sharply; Reserves Increase*, OIL & GAS J., Dec. 27, 1982, at 75, 77, 79; Parker, *supra* note 5; WORLD OIL, *supra* note 1.

129. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-5.

130. Law 21,778, *supra* note 25, at 1 (art. 4); Regulations, *supra* note 13, at 1 (cl. 1).

131. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6).

quality and under similar conditions.[132] This latter provision should serve to keep Law 17,319 prices at the world market level.

Law 21,778 crude producers are subject to a more nebulous price structure, with the payment in cash being based on "the unit of measurement corresponding to the type of hydrocarbon obtained and delivered . . . ."[133] Since these price standards are set by the state and a risk contractor can sell crude only to the state until payment in kind is made, the Law 21,778 risk contractor has no control over the price he receives for his domestically marketed crude. He will be paid according to the state's established price structure.

For gas, Law 17,319 provides that gas prices shall be set by agreement and that the prices "shall assure the operator an equitable return on the corresponding investment."[134] This provision, combined with the state company's preemptive right to purchase a concessionaire's gas output, puts the Law 17,319 gas-producing concessionaire in much the same position as the Law 21,778 gas-producing contractor that must sell under contract to the state company based on the same price framework that Law 21,778 crude contractors are subject to.[135] The similarity is further enhanced by Law 21,778's authorization allowing YPF to prevent payment in kind for natural and liquid gas (i.e., YPF can limit payment in kind to crude petroleum),[136] which, in effect, gives the state a first option to purchase on all of a Law 21,778 risk contractor's gas production.

Before a petroleum producer commences an exploration program, the producer wants to be assured that he will be able

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132. *Id.* at A-2, A-31 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-11. It appears that this last guarantee has not been abided by. A. IGLESIA, POLITICA PETROLERA ARGENTINE 263 (1980). Perhaps this failure to meet world prices can be explained by the sudden upturn in the world price in recent years and by the Law 17,319 exception which provides that "[s]hould the prices of imported crudes be substantially increased due to exceptional circumstances, such prices shall not be taken into consideration for establishing the domestic marketing prices . . . ." Law 17,319, *supra* note 11, at A-2 (art. 6).

133. Law 21,778, *supra* note 25, at 1 (art. 4); *see also* Regulations, *supra* note 13, at 1 (cl. 1). For an example of crude price formulas in risk contracts, see Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 22-23 (art. 11.1).

134. Law 17,319, *supra* note 11, at A-3 (art. 6).

135. Law 21,778, *supra* note 25, at 1 (art. 4); Regulations, *supra* note 13, at 1 (cl. 1); Memorandum of Apr. 14, 1978, *supra* note 13, at 13. For an example of risk contract gas formulas, see Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 23-24 (arts. 11.2, 11.3).

136. Regulations, *supra* note 13, at 23 (cl. 16.2.3).

to market his product commercially. This should not present a major problem for a Law 17,319 producer. The free market access allowed to such a producer provides him with the opportunity to solve any major marketing obstacles during both nonexportation and exportation periods. Even though a Law 17,319 gas producer must first offer his gas to the state company, such option to purchase must be exercised by the state within "reasonable time limits" and the producer can, with appropriate approval and subject to prescribed regulations, decide on the disposition of any gas not purchased by the state.[137]

The Law 21,778 producer, on the other hand, has only one buyer prior to payment in kind—the state.[138] Such a contractor could find himself in a difficult position if the state company is unwilling (e.g., because the quality of the crude is not suited to the state company's refining facilities) or unable (e.g., lack of storage capacity) to take the contractor's product while, at the same time, domestic production has not satisfied domestic needs so that the payment in kind alternative is also not available to the contractor. The Law 21,778 operator must contractually anticipate these eventualities and obtain either guarantees of receipt of his production in reasonable geographic locations with penalties against the state for failure to comply, or the right to dispose freely of any excess production not taken by the state company. Additionally, provisions should be made stipulating who bears the costs when additional storage or transportation facilities are required to sustain receipt of the private operator's production by the state company. Various provisions along this line have been used by risk contractors including:

(1) A guarantee of reception of a specified volume of crude oil by YPF with options for the contractor to dispose of any excess.
(2) Specification of the reception standards that the hydrocarbons must meet (e.g., water content, salinity levels).
(3) Agreements on when the contractor will not be obliged to make certain production related investments.
(4) Provisions for reinjection or commercial disposal (with a

137. Law 17,319, *supra* note 11, A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-11, B-12.

138. Law 21,778, *supra* note 25, at 1 (art. 4); Regulations, *supra* note 13, at 1 (cl. 1). For an example of actual production, delivery, and transportation clauses in risk contracts, see Contract for the "Llancanelo" Area, *supra* note 13, at 21-30 (art. 10, Annex V, Annex VI).

partial payment to YPF) of gas that YPF cannot receive or for which transportation facilities are not available.

(5) Allowance of construction and operation by the private contractor of equipment for obtaining liquified gas.

(6) Assessment of penalties against YPF for failure to comply with its reception requirements for any causes other than force majeure or fortuitous case.

(7) Provision for who bears the cost of storage and treatment facilities.

(8) Provision, as part of two thermal stimulation pilot projects, that the contractor and YPF shall agree on the conditions under which the contractor may dispose of crude oil not disposed of by YPF.

(9) Provisions concerning transportation to YPF's point of reception.[139]

Obviously, a private operator can make only limited demands when dealing with a foreign sovereign in a competitive bidding situation. Nevertheless, the contracting company must protect itself by assuring reception of its production on the most favorable terms possible.

A final important concern of a private operator working in Argentina is the quantity of his production that will be available for exportation. In a country such as Argentina that has severe economic problems and chronic political instability, an operator wants to have free rein, including the right to export as much of his production as is possible. The ability to export provides an opportunity to circumvent unfavorable market conditions within the country. Nevertheless, Argentine production must satisfy Argentine petroleum needs before any private operator may truly claim freedom to dispose of his production, especially the freedom to export that production.[140] Additionally, the restrictions on export rights to natural gas are more stringent than those for crude petroleum.[141] A Law 17,319 producer of liquid hydrocarbons has to be authorized by the National Executive

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139. For examples, see Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 14-15, 18-19, 20 (arts. 10.1, 10.2.2, 10.3); Contract for the "Llancanelo" Area, *supra* note 13, at 23-26 (arts. 10.1, 10.2.2, 10.3); Contract for the "Malargue Sur" Area, *supra* note 13, at 17-19, 21 (arts. 10.1, 10.2.2, 10.3).

140. Law 21,778, *supra* note 25, at 1 (art. 4); Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Regulations, *supra* note 13, at 1 (cl. 1); Memorandum of Apr. 14, 1978, *supra* note 13, at 1-14; Memorandum of June 23, 1967, *supra* note 3, at B-10, B-11.

141. Law 21,778, *supra* note 25, at 1 (art. 4); Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Regulations, *supra* note 13, at 1, 23 (cls. 1, 16.2.3).

Power to export crude supplies that are "in excess of the normal needs of the internal market."[142]

Aside from meeting domestic production goals, the only statutory restrictions placed on the right to export are that the prices received for the exported production be commercially reasonable in light of the international market and that the operator submit to any promulgated rules designed to accomplish equitable participation in the internal market by all producers within the country.[143] Similar in nature, but slightly more restrictive, is the Law 21,778 proviso that a contracting company may receive payment in kind when domestic production meets domestic demand and an "adequate margin of reserves [as decreed by the National Executive Power] has been established."[144]

One further drawback that a contractor might experience is that if crude risk contract prices in Argentina are low and payment in kind is made based on the cash price, the operator may be disappointed at the quantity of crude received as payment in kind. However, both the 1980 Unionoil International Exploration Company, Ltd./Inalruco S.A. Petrolera Risk Contract[145] and the 1979 Occidental De Argentina Inc./Bridas/Union Texas/ Compania Quimica Risk Contract[146] provide that once the contractor has invoiced YPF for crude for which payment is due in kind, the contractor may "dispose of said Crude Oil immediately."[147] So the Law 21,778 crude oil threshold point for export rights is higher than the Law 17,319 threshold level, but once a Law 21,778 contractor that has contracted to receive payment in kind reaches the payment in kind stage for crude, he has unrestricted rights of disposition.

For natural gas exportation rights, a private operator must overcome more legal obstacles than for crude exportation rights.

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142. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-10, B-11.

143. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-10, B-11.

144. Law 21,778, *supra* note 25, at 1 (art. 4); *see also* Regulations, *supra* note 13, at 1 (cl. 1). Payment in kind is available only if "clauses contemplating such possibility and the basis for pricing the hydrocarbons delivered in payment have been incorporated to the corresponding contract." Law 21,778, *supra* note 25, at 1 (art. 4).

145. Contract for the "Llancanelo" Area, *supra* note 13.

146. Contract for the "Malargue Sur" Area, *supra* note 13.

147. Contract for the "Llancanelo" Area, *supra* note 13, at 37 (art. 11.4); Contract for the "Malargue Sur" Area, *supra* note 13, at 28 (art. 11.5).

Under Law 17,319, a concessionaire may, upon obtaining appropriate consent, decide upon the disposal and utilization of any natural gas not purchased by the state company. There is no limit, though, on how much of his production the state company can purchase,[148] making uncertain the availability of export rights. Even more restrictive is the Law 21,778 reservation by the state of the right to refuse any payment in kind on any "natural and liquid gas produced."[149] Thus, a Law 21,778 gas producer may not receive payment in kind even after domestic demand is met and an adequate reserve is established.

Some risk contracts provide that when gathering and transportation facilities are lacking, a contractor may, in some instances, commercially market (and export) the gas produced and pay YPF 25% of the price the contractor would have received if the gas had been delivered to the state.[150] Underlying these nuances for Law 21,778 natural gas disposition is the same basic Law 21,778 standard—satisfaction of domestic demand and an adequate supply of reserves—that applies to crudes.[151] In summary, the essence of the exportation right is that a producer's right to export revolves around the whims of the state and the achievement of national production goals.

III. Conclusion

The private sector of the Argentine petroleum industry does present exploration and production opportunities for entities that possess sufficient technical and financial competence. This industry, however, is highly regulated by the state and should not be entered without a thorough investigation of the prevailing political and economic climates within the country. In addition, whenever legally possible the private company must insist on intelligent contractual safeguards anticipated to protect its interests. In the private company's favor, and balanced against the state's desire to control its resources, is the fact that Argentina

148. Law 17,319, *supra* note 11, at A-2, A-3 (art. 6); Memorandum of June 23, 1967, *supra* note 3, at B-11, B-12.

149. Regulations, *supra* note 13, at 1, 23 (cls. 1, 16.2.3); *see also* Contract for the "Llancanelo" Area, *supra* note 13, at 36-37 (art. 11.3); Contract for the "Malargue Sur" Area, *supra* note 13, at 27-28 (art. 11.4).

150. Contract for the "Comodoro Rivadavia Coastal Belt" Area, *supra* note 13, at 10 (arts. 10.2.1, 10.2.3).

151. Law 21,778, *supra* note 25, at 1 (art. 4); Regulations, *supra* note 13, at 1 (cl. 1); Memorandum of Apr. 14, 1978, *supra* note 13, at 13-14.

cannot rely on its state-owned companies to satisfy the country's petroleum production goals. As a consequence, Argentina has a definite need for private investment and participation in this vital industry.

The private operator looking at potential involvement in Argentina's oil and gas industry has three avenues to consider: service contracts, risk contracts, or concession arrangements. This comment analyzed the latter two alternatives from an exploration and production perspective. Both the risk contract and the concession agreement provide exploitation rights and, as required, exploration rights tailored to meet a specific prospect's requirements. Both, however, come burdened with work and investment commitments and fiscal regimes that require an operator to accurately and continuously plan and evaluate his activities. In all, the demands of keeping up with all of these commitments, combined with the economic and political instability of Argentina, furnish the private operator with an interesting and challenging legal and business venture.

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