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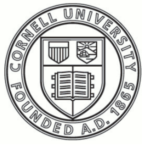

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Doing Business in Argentina

Baker & McKenzie

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Doing Business in Argentina

Abstract

[Excerpt] 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 no longer subject to prior government approval beyond those applicable to any domestic or foreign investor in each particular 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 achieving a liberalization and deregulation of 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; (vi) certain intangible assets; (vi) other forms acceptable to the foreign investment authorities or contemplated by special legislation.

Keywords

Argentina, foreign investment, law, trade, commerce

Comments

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Doing Business in Argentina

Argentina

Baker & McKenzie

2004

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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 no longer subject to prior government approval beyond those applicable to any domestic or foreign investor in each particular 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 achieving a liberalization and deregulation of 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; (vi) certain intangible assets; (vi) other forms acceptable to the foreign investment authorities or contemplated by special legislation.

B. Know How Transfer

1. Scope of the *Ley de Transferencia de Tecnología* ("Know-How Transfer Law")

The *Ley de Transferencia de Tecnología* No. 22,426 (hereinafter referred to as the "Know-How Transfer 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 know-how or trademarks by foreign-domiciled persons to Argentine-domiciled persons. It defines "*know-how*" 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 became in full force and effect, the Know-How Transfer 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 it still has adverse tax consequences.

A License Agreement between related parties had 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". The Know-How Transfer Law provides that the consideration agreed upon is to be consistent with the transferred know-how. Such consideration is presumed to be consistent with the licensed know-how provided it does not exceed 5% of the net sales value of the products manufactured or the services rendered by using said know-how. The Know-How Law defines "net sales value" as the *ex factory* invoice value, less discounts, allowances, refunds, internal and value added taxes.

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 know-how.

4. Tax treatment of payments

Generally speaking, payments to foreign beneficiaries arising from know-how transfer, technical assistance or trademark 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 or not with the INPI, and also to some other reasons (e.g., the way in which the service is being rendered or distributed, and the like).

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 a31.5% income tax withholding. Furthermore, registered agreements shall be subject to a tax rate ranging from 21% to 28%, according to the kind of know-how being transferred and the method used for estimating the remuneration or service.

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 most important aspects 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 independent effort, capable of transforming matter or energy for the benefit of man.

c. Inventions of products, processes and products obtained using a patented process shall be patentable if they are novel, if they involve an inventive activity and if they are capable of industrial application. Whilst absolute novelty is required, the exhibition of the invention at a national or international exhibition within one (1) year prior to the patent application date or the priority date shall not affect the novelty requirement.

d. Patents are granted for a term of twenty (20) years as 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, sell and import of the subject matter 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 labor 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 as from the granting of the patent, or of four (4) years as from the filing of the application, any person shall be entitled to request from the INPI an authorization to use the invention without the patentee's authorization (compulsory licenses), if the invention has never been used, or if its use has been interrupted for more than one (1) year, except in case of force majeure or upon lack of effective preliminary steps for using the patented invention.

j. The Law grants a 10 year-protection term of Utility Models as from the pertinent application filing date, and such term may not be extended.

k. The Law provides for civil and criminal penalties – such as, fines and imprisonment - for 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 patterns or configuration of elements given or applied to an industrial product that is chiefly decorative or ornamental.

To be capable of 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 as from the date of such deposit, which may be extended for two similar 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. 22,362/80 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 to be subject to a first examination by the Trademark Office examiners.

The protection term of a registered trademark is 10 years as from the date of registration. It may be renewed indefinitely for periods of 10 years, provided that the trademark be used within the five years preceding each expiration date. Use of the trademark is required to keep the registration in full force and effect.

Notorious or well-known 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 belonged 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 to 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 reproduction means.

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 in those sections, the Law sets forth that moral rights are inalienable and imprescriptible.

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

As regards software, the Law provides that physical 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 as one of the forms of exploitation of the intellectual property.

As a general rule, copyright endures for a term consisting of the life of the author of the work, and 70 years as from the first day of the month of January subsequent to his/her death. As regards posthumous works, copyright endures for 70 years as from the first date of the month of January subsequent to the

author’s death. As far as joint works are concerned, said term shall become effective as from the first day of the month of January of the year subsequent to the death of the last author. With respect to anonymous works published by legal entities, they are protected for 50 years as from their publication date. As regards cinematographic works, copyright is protected for 50 years as from the date of the last author’s death. (The law considers the following individuals as authors unless otherwise agreed: the scriptwriter, the producer, the director and the soundtrack composer, if any). Copyrights in photographic works lasts for 20 years as 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 were no treaty between them, the applicable term would not be longer than the one granted by the country of origin. If such term were 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 them implies a suspension of protection as regards economic rights set forth by the Law until their effective registration.

As regards foreign works, they do not need to be registered in the Argentine Republic. However to enjoy the 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 were applicable, no formalities would be required; if the Universal Convention were applicable, formalities would be fulfilled if the work included the © with the name of the copyright owner and the year of the first publication). If no treaty were applicable, authors had to prove they complied with the formalities of the country of publication or evidence that said country did 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 reestablished an exchange control regime in January 2002 as from the enactment of the Emergency Law No. 25,561. Exchange control regimes have existed in the past in the Argentine Republic but were eliminated in 1991 by the so called "Convertibility Law".

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.

Currency exchange controls were implemented through the issuance of the mentioned Emergency Law No. 25,561 and certain regulations passed by the *Banco Central de la República The Argentine Republic* (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.

Transfers of funds outside the Argentine Republic are possible subject to certain BCRA's restrictions based on the amount and purpose of the transfer. As a general rule, 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 of payment. Other concepts related to repayment of principal and interest of loans are subject to prior registration with the BCRA and compliance with specific regulations (such as a schedule of payment and allocations of payments abroad). Portfolio investment transfers abroad (including loans to non-residents and purchase of real property abroad) are subject to certain restrictions 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 to the Argentine banks or authorized exchange entities.

Notwithstanding the foregoing, it is still possible to exchange Argentine pesos for United States dollars through arbitrage of public or private bonds denominated in United States dollars which may be purchased at the Buenos Aires Stock Exchange for Argentine pesos, and may be imported to and exported from the Argentine Republic without any restriction, and sold for United States dollars in other financial markets where the same are offered. However, we may not foretell whether or not

this arbitrage possibility shall be available in the future due to future regulations constraining the free remittance of funds into and from the Argentine Republic.

E. Foreign Trade

1. (Final) Imports

Imports of goods into the Argentine Republic are governed by Customs Law No. 22,415 enacted in 1981, regulatory ordinance No. 1001/82 and other provisions established by Customs authorities.

Domestic companies wishing to perform foreign trade-related activities must be previously registered with the Register of Importers and Exporters kept by Customs.

In general, import duties vary from 0 to 23% according to the group of goods. The calculation base is the pertinent CIF value of the goods. The Argentine Republic, through law No. 24,425, has applied the provisions of GATT's Uruguay Round as well as the assessment regulations outlined therein.

In addition to the custom duties, an importer shall pay the following charges:

- (i) Statistics Fee: in general, it is estimated on the CIF value of the imported goods. The tax rate currently in force is 0.5%, although some goods are exempt from paying it.
- (ii) Value Added Tax (V.A.T): 21%.
- (iii) V.A.T. additional advance: 10% that may be raised up to 20% provided certain requirements are not met.
- (iv) A 3% advance of the income tax, when the importer is not the final consumer at the same time.

VAT paid by the importer may be offset against its output tax on 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.

2. Temporary Imports

Neither the above-described custom duties nor the taxes must be paid whenever the import transaction is considered as a "temporary" import of goods (Executive Orders Nos. 1101/82 and 1439/96).

In this case, the importer shall prove:

a. That the imported goods are to be used to obtain other goods that shall be subsequently exported; or

b. That the importer is not the owner of the goods but is obliged to re-export them once he has finished using them, and that their value does not justify their acquisition (this provision does not apply to leasing or hire-purchase agreements).

These conditions are valid for temporary imports of capital assets for the maximum term of three years. The approval of the temporary imports, their term of duration and their potential extension (only for one additional original term) shall be at the Customhouse's sole discretion. Other terms are applied to other kinds of goods. To secure their re-exportation, a bond must be posted with Customs.

Upon the expiration of the original term or the extension, if any, goods must be re-exported. However, temporarily imported goods may remain forever in the country subject to the condition of paying the pertinent import duties on their original value.

3. Dumping

Antidumping process is regulated by Law No. 24,425 and its Regulatory Executive Order No. 1,088/01. These antidumping provisions 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.

4. Exports

In general exports, are subject to rights varying from five per cent (5%) (manufactures) to twenty per cent (20%) (commodities) of the FOB value of the pertinent goods.

The main measures for promoting exports are the following:

a. Refundings: they are estimated on the FOB value of exported goods (excluding the value of the imported raw materials used for them). Said refunds are paid to the exporter irrespective of whether he is the manufacturer or not. Export refunds may vary from 10% to 0% as per tariff position and depending on whether goods are exported to a Mercosur member country or to any other region.

b. V.A.T. exemption for exports and V.A.T. refund paid on the manufacturing process of exported goods: in general, such refund does not exceed 21% of the FOB value of the exports.

5. Mercosur

The purchase and sale of goods within the Mercosur free trade zone is exempt from both import duties and statistics fee, except for 15% of the customs

positions unilaterally determined by each country. Mercosur member countries have established a common external tariff (CET) for almost 85% of the tariff positions of the products imported from outside Mercosur's free trade zone. The other positions are under a schedule that sets forth either to increase or reduce, on an annual basis, as the case may be, import duties of each of the countries until converging on the CET in 2001 and 2006, respectively, according to the kind of goods and country.

Mercosur's provisions concerning the origin of products consider the following as Mercosur's original products, to wit:

a. Those products completely manufactured in one Mercosur country exclusively with materials originated in other Mercosur countries.

b. Those products manufactured with materials from extra-Mercosur third countries but processed in one Mercosur country. This process implies a "tariff jump" (a different tariff position for the manufactured product). As regards certain products, a 60% of Mercosur added value must also be proved. All those products originated in third countries that were only assembled, classified, separated, labeled, or subject to a process not modifying their characteristics are not considered Mercosur products.

c. However, if the product does not comply with (b) above because the transformation process does not imply a modification of the tariff position, it shall be considered as being originated in the Mercosur provided the CIF value of materials originating in third countries does not exceed 40% of the FOB value of the manufactured product.

Mercosur's Resolution No. 17/94 sets forth that the tariff to be determined for imported products is calculated pursuant to the agreement on the application of Section VII of the General Agreement on Tariffs and Trade (GATT assessment agreement).

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 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. a certified copy of the articles of incorporation of the foreign corporation;

b. a certificate of good standing of the foreign corporation;

c. a 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. a certified abstract of the minutes of the board of directors' meeting that approved the establishment of the branch;

g. a power of attorney authorizing the local attorney to register the branch;

h. a 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).

Additionally, the foreign corporation should not meet 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 generally are 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 in within two years as 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).

Additionally, the foreign corporate shareholder should not meet 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.

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. Imports

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

If the import price of the goods agreed upon by the foreign exporter and the local importer is higher than the wholesale price of such goods in the country of origin (plus any applicable freight and insurance), it is presumed that there is an economic link between the parties and, unless there is sufficient evidence to the contrary (i.e., the burden of proof is on the taxpayer), the difference between the import price and the wholesale price in the country of origin (plus any applicable freight and insurance) is considered net profit of the foreign exporter and taxed at the usual 35% rate.

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 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 corporation or branch of a foreign corporation and a foreign related party.

In the case of payments under the Know-How Transfer 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).

For other inter-company transactions, an Argentine taxpayer may deduct its expenses if the charges are consistent with arm's-length practices.

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, 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 know-how transfer law: a) amounts paid for technical assistance, engineering or consulting services not available in the Argentine Republic at INPI's discretion b) amounts paid for assignment of rights or licenses for use of patents others than those contemplated in a) above	 60% 80%	 21% 28%
Interest on foreign credits: a) the borrower is an Argentine financial entity. 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. c)the borrower is an Argentine corporation (excluding	 43% 43% 100%	 15.05% 15.05% 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 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[1]	50%	17.5%
Any other payment to a foreign beneficiary not contemplated above	90%	31.5%

[1] 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.

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 movable 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. in applied to the net price of the good, service or work, generally at the rate of 21%. This rate is different in some specific cases.

I. Minimum Presumed Income Tax

The Minimum Presumed Income Tax (“MPIT”) established by Law No. 25,063 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 incorporated in the Argentine Republic;

b. foundations and non-profit organizations;

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 of companies or individuals located outside the Argentine Republic.

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 property subject to depreciation (except for automobiles) during the fiscal year in which they have been acquired and the following one; and

b. the value of any investments in new buildings or such improvements on previously built ones during the fiscal year in which such total or partial investments have been made and in the following one.

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 to compute for the purpose of this tax and as tax credit, any tax levied and effectively paid upon its assets located outside the Argentine Republic up to the increase of the Argentine presumed minimum income tax 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 taxpayer. The personal asset tax shall apply at the rate of 0.5% for taxpayers who own assets, the value of which is over $102,300 but under $302,300 at the end of the calendar year, or 0.75% for taxpayers who own assets the value of which exceeds $302,300 at the end of the calendar year, on taxable assets located within the Argentine Republic and abroad, belonging to individuals and estates domiciled in The Argentine Republic. Argentine domiciled taxpayers may deduct from the tax base a non-taxable amount equal to $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 $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 $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 $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 apply (instead of such 0.75% rate) on unexploited urban real property owned by non-Argentine companies, among others.

In the case of corporate vehicles organized in the Argentine Republic, non-resident equity holders (individuals, estates or legal entities) and individual residents who own equity interests subject to the 0.5% personal assets tax, the personal assets tax should be determined and paid by the corporate vehicle.

For the purposes 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 in the Argentine personal assets tax as a consequence of including taxable assets located abroad in the taxable basis.

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 and 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 methods to credit 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 subsection (b) and (c) the rate is 1.2%, except for certain cases.

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

L. Gross Receipts Tax

This is a municipal or provincial tax levied on the gross receipts of independent activities performed for a profit. In the City of Buenos Aires, for instance, the general rate for 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. In each of the provinces this tax is payable upon local execution of what is considered to be a "taxable document". It also applies to a document having "effects" in a given province (local effects would be 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) other than the one in which it was executed. In the City of Buenos Aires, this tax is only payable on transactions involving real property not intended for dwelling purposes.

N. 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 pays due upon unfair dismissal. In case of termination during the 3-month trial period, the employer must give a prior written notice 15 days before the termination date; the employer's failure to do so, entitles the terminated employee to receive a severance pay in lieu of such omitted prior termination notice.

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

Indefinite term employment contracts, except for "seasonal contract" are subject to a trial period[2] of 3 months as from the beginning of the contract.

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

a. Fixed term contract: its term may not exceed 5 years and employers must have an extraordinary cause.

b. Temporary contract: is executed to perform a specific piece of work or to provide a specific service, whenever extraordinary circumstances so determine.

c. Seasonal contract: is 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: are executed by young individuals that meet certain requirements for the purpose of learning a craft, trade or profession.

Under the ECL, employers must register their employees' basic data (including hiring date and salary) within a Special Payroll Book, which is provided by the labor administrative authority and is subject to periodical controls by the Ministry of Labor). Failure to comply with such registration triggers severe fines.

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[2] Trial period stated by Law No. 25,877, effective as from March 28, 2004.

2. Employee's Rights

Employees are entitled to:

a. Minimum Salary: Parties may not agree on a salary below the minimum amounts set forth by the law. Most industries and activities have minimum salaries that were agreed by and between Employers' Chambers and Trade Unions and which may not be lower than the minimum salary fixed by the Government (at present, the minimum salary amounts to $350).

b. Equal pay: The rule "equal pay for equal task" applies. Nevertheless, employers may pay incentives to those employees who perform outstanding services, or pay an additional amount to employees under certain circumstances or categories (like those who have a higher seniority, a professional degree, etc).

c. Overtime pay: Regular employees (those who are subject to mandatory rules regarding working hours) are entitled to overtime pay whenever they work in excess of the working schedule (i.e., more than 48 hours per week or 8 hours per day). Employees who work under an irregular daily schedule are entitled to overtime when they exceed 9 hours per day. Additionally, night work and hazardous work have reduced working schedules. Executives and other special categories of employees are not subject to such mandatory rules on working hours and, subsequently, are not entitled to overtime pay.

d. Thirteenth Mandatory Salary: Employers must pay the so-called "*Sueldo Anual Complementario (SAC)"* or Supplementary Annual Bonus," or "Thirteenth Mandatory Salary" in two installments: the first one on June 30, and the second one on December 31 of each year. The amount of each installment is equivalent to 50% of the highest remuneration earned by the employee over the pertinent semester.

e. Paid vacation leave: This leave ranges from 14 to 35 calendar days, depending on the employee's seniority.

f. Paid sick leave: Employees are 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).

g. Paid holidays and special leaves: Employees are to enjoy 13 holidays and special leaves set forth by the ECL or the particular Collective Bargaining Agreement ("CBA").

h. Life insurance: Employers must hire collective life insurance for the benefit of their employees. The minimum coverage per employee is $5,4006,480. CBAs may establish mandatory additional coverage.

i. <u>Labor Risks Insurance or Workers' Compensation Insurance</u>: Employers must hire insurance covering labor diseases and accidents with a private and authorized *Aseguradora de Riesgos de Trabajo* (*A.R.T.) (*Labor Risk Insurance Company).

j. <u>Medical Assistance provided by Health Care Organizations or Health Care Providers (*Obras Sociales*)</u>: The coverage is paid for by the Public Social Security System, through employees' and employers' contributions. 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.

k. <u>Subsidies</u>: Family Allowances and Unemployment Subsidy, supported by the social security system, through employees' and employers' contributions. 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 by law).

3. <u>Small Companies</u>

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. After fulfilling 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 all employment relationships in the so-called *"Small-sized Companies"("Pequeñas Empresas")*. Pursuant to said law, *Small-sized 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 such law (06/08/1995), the estimation of employees shall be based on the staff existing as of 01/01/1995. *Small-sized 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 or unfairly during the extended protected period set forth by Emergency Law No. 25,561 as amended amendments (i.e., from 07/01/04 through 12/31/04) must pay the dismissed employee an additional 80% of 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 offense 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 give the employee a written explanation of the ground for his dismissal. 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 pays (i.e., severance pay based on seniority, severance pay 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, layoffs must be carried out in order of seniority.

Massive layoffs 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 may object to the reduced severance payment package when they have not reached any 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 as 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 pay 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

Employees are entitled to a severance pay based on seniority equivalent to 1 gross monthly salary (i.e., the employee's highest monthly and regular salary of the last twelve months) for each year of service or any fraction thereof (in excess of three months). In no event may this severance pay be lower than 2 actual gross monthly salaries.

In order to calculate this severance pay based on seniority, 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 contemplated by the applicable CBA. If more than one CBA is applicable to the employer’s activity, the most favorable one to the employee shall be applied. This statutory ceiling is applied to unionized and non-unionized employees and it amounts to approximately $2,000.

The Supreme Court of Justice of the Province of Buenos Aires has ruled that employers who dismiss their employees without just cause within the jurisdiction of the Province of Buenos Aires must also pay the proportional part of the thirteenth mandatory salary on this item, which is an additional 1/12 on the mandatory severance pay based on seniority.

The severance pay based on seniority is not subject to any taxes or social security contributions or withholdings.

The mandatory severance payment in lieu of prior termination notice and the balance salary of the month of termination are subject neither to social security contributions nor withholdings, but to income tax withholdings.

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 pay:

(i) employees dismissed during the 3 months trial period are entitled to 1/2 of the employee's monthly salary;
(ii) employees with less than 5 years of seniority are entitled to 1 monthly salary;
(iii) employees with more than 5 years of seniority are entitled to 2 monthly salaries.

The mandatory severance pay in lieu of prior termination notice for employees of *Small-sized Companies*[3], as defined by Law No. 24,467, 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) and 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-sized Companies* as defined by Law No. 24,467 are not entitled to this 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.

d. Protected categories

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

Pregnant, recent mothers and just-married employees who are dismissed without just cause are entitled to an additional severance pay equal to 1 year of 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.

[3] Applicable to employees hired by Small-sized Companies as from June 8, 1995.

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 pays from their employers under constructive dismissal. Under the provisions of the Civil Code, adversely affected employees may also claim for a compensation for pain and sufferings or emotional distress.

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

Other cases in which employers are exposed to additional payments include traveling salesmen, breach of a fixed-term employment contract, lack of payment of the mandatory severance pay package in due time and failure to deliver the employment certificates in due time.

5. Collective Bargaining Agreements (CBAs)

Law governing CBAs rules that parties may negotiate the scope and enforceability of the CBA based on:

- the employer's industry (car manufacturing);
- jobs within an industry (supervisors);
- the worker's job duties (traveling salesmen);
- 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 on the members of the Trade Unions and Employers' Associations that are parties to them but also on 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.

Collective bargaining agreements CBAs may impose additional contributions on the Trade Union that negotiated the agreement.

6. <u>Collective Disputes</u>

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 arbitration, they are free to take whatever legal action they may deem suitable, including a direct action (e.g., a strike, lockout, etc.)

7. <u>Special Laws</u>

Several laws have been passed to regulate the activities of various categories of employees. The most important of them include the activities of traveling salesmen, seamen, workers who work at their homes, farmers or agrarian workers, professional journalists, private teachers, and domestic workers.

8. <u>Social Security Regulations</u>

Employees' salaries are subject to social security payments. Both employers and employees must contribute to the social security system. Employers must pay their part of the contributions and must also withhold the employees' part from their remuneration.

Social security contributions must be made for the following: Retirement and Pension Plans, *Obras Sociales* (Health Care Organizations or Health Care Providers), *INSSJP* (National Institute providing medical assistance for retirees and pensioners), Family Allowances, Unemployment Fund, and *A.R.Ts.* (Labor Risk Insurance Companies or Workers' Compensation Insurance Companies).

Levels of contributions required from employers and employees have varied significantly throughout the time. Currently, <u>employer's contributions depend upon their activity and turnover amount</u>:

(i) 27% if the employer is engaged in the provision of services or in commercial activities and their turnover exceeds $48,000,000;
(ii) 23% for the rest of the employers.

Subject to specific regulation, certain employers should enjoy reductions in the social security contribution amounts as follows: employers with a maximum

payroll of 80 employees shall enjoy an exemption (for the term of 12 months) equivalent to 1/3 of the employers' contributions in force for each new employee that they hire before 12/31/2004; said exemption shall be raised to 1/2 of the employers' contributions if the employee hired to hold the new position is a beneficiary of the Head of Household Program (*Plan Jefes de Hogar)*.

Employees' contribution shall also depend on the retirement benefit they have chosen:

(i) 13% in the private regime (capitalization through private retirement funds);
(ii) 17% in the public regime (public retirement and pension fund system).

Nevertheless, such difference shall be eliminated by the end of 2005, 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 over the legal ceiling (i.e., the portion which exceeds $4,800) is not subject to social security contributions.

For the purpose of calculating the social security contributions paid by employers, the legal ceilings are the following:

- from June 1, 2004 through September 30, 2004: $ 6,000;
- from October 1, 2004 through March 31, 2005: $ 8,000;
- from April 1, 2005 through September 30, 2005: $ 10,000;
- as from October 1, 2005: no legal ceiling shall be applied.

The Retirement and Pension Fund System has both a public and a private regime. Employees and self-employed workers (or autonomous workers) must choose one 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 the course of their employment) whereas those opting for the private system regime are entitled to a retirement pension that 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.

Employers must pay the premium of the so-called *A.R.T*. (Labor Risk Insurance Company) because it is not included in the above-mentioned contribution rates. Such premium is agreed upon with the pertinent *ART,* depends on the activity, and is usually an average of 3% of the payroll.

O. 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 may not run companies engaged in commercial, industrial or farming activities or any other activities without prior BCRA's authorization;

b. they may not encumber their assets without prior BCRA's authorization;

c. they may not accept their own shares as collateral security for any kind of transaction;

d. They may not enter into any kind of transaction with their directors, officers, managers or any other persons directly related to the institution under more favorable 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 may not exceed 25% of the financial entity's networth, and are subject to certain 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 no 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 also has two remarkable features. Firstly, 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.

Secondly, such Executive Order provided that financial institutions in which more than 30% of their corporate capital is held by individuals or entities domiciled abroad and branches of foreign financial institutions should enjoy the same treatment granted as 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 such Executive Order, 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. adversely 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 firstly occur, regardless of the amount involved. In the absence of such approval, the sale may not be performed, 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. have an investment rank of 1, 2, or 3 according to (i) the CAMEL procedure, and (ii) the duties related to the evaluation of the internal control system.

P. Capital Markets

1. Securities Market

During 2003, securities markets recovered in part 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 the 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*". Each *Mercado de Valores* is liable for all transactions performed by its stockbrokers and may impose sanctions on them. Transactions entered into 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), being the oldest and largest one, founded in 1854 and whereat nearly 90% of all securities are traded.

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 depositary 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. Different series of the same class of debt notes may be issued by the same issuer, but 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.

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 networth 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 networth and profit prospects of the company, and that it would not result in any unjustified dilution of the existing shareholders always entitled to pre-emptive rights with respect to new issuances of shares.

The Argentine Republic has a relatively active market of securities and bonds and a corporate bond market. The "*Comisión Nacional de Valores*" (National Securities Commission) (the "CNV") regulates markets dealing with public offering of securities. The CNV was established in 1937. Individuals and entities dealing in such markets as well as in the public offering of all securities other than primary issues of Government securities are subject to CNV's control.

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Q. Environment

1. Sources of Environmental Legislation

Pursuant to Section 121 of the Argentine Constitution, the provinces retain all powers that are not expressly delegated to the federal government. The power to legislate on environmental matters has not been expressly granted to the federal government. Thus the provinces have established their own environmental laws and regulations. The Constitutions of some provinces include environmental provisions. The Federal Government does, nonetheless, have the power to legislate in territories under federal jurisdiction.

2. Federal Legislation

The main federal applicable rules are hereinafter set forth:

a. 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.

b. 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.

c. 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.

d. 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.

R. Mining

1. Exploration Permits

Any company or individual may apply for an exclusive exploration permit. The application 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) an affidavit stating that the application does not violate the Mining Code, and establishing the area and conditions that the explorer must meet. The applicant for the exploration permit must also pay an exploration fee at the time of filing the pertinent application, which shall be refunded (totally or partially) if the permit is either denied or granted for a smaller area. The mining authority automatically denies the application if evidence of payment of the fee is not submitted. Currently, for first and second category minerals (i.e., gold, silver, copper, lithium, salt, etc.) the exploration fee is approximately $400[2] for each unit (500 hectares) irrespective of the term of the permit. The boundaries of exploration areas must contemplate north-southern and east-western aspects.

The provincial or federal mining authority (the "Authority"): (i) registers the permit; (ii) notifies the owner of the land; and (iii) publishes an official notice in the Official Gazette that is published at the place where the permit is being requested. Anyone who claims to have a right to the land to be explored must appear within 20 days following such publication. In the absence of any objections, the Authority grants the permit immediately and from the filing date onwards, 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 application (known as “discovery declaration”) along with a sample of the found minerals. The Authority is to grant an exploitation concession to the discovering company.

[2] At present, the exchange rate is US$1=$ 2.80, approximately.

The concession grants its holder the absolute ownership right to the mine it has discovered. But said ownership right is subject to two conditions: (a) the payment of an annual fee; and (b) the investment of a minimum amount. If the holder of the concession does not comply with them, the concession is forfeited. For first class minerals (i.e., hard minerals) and most of second class minerals, the annual fee per unit is approximately $80[3]; for other second class minerals, the annual fee per unit is approximately $40[4].

Should such conditions be 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, Government passed the mining modernization law. Among its innovations, it eliminated the prior large-scale mining regime, increased the exploration areas that private parties may 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 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 may carry out mining projects in areas of a size similar 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 passed in 1993 to promote mining investment. It grants certain federal, provincial and municipal tax advantages. However, provinces and municipalities must expressly adhere to this law for it to have effect on their taxes.

a. Tax Stability

Any company qualified under this law enjoys "tax stability" for thirty years. The government secures that (i) the qualified company shall be subject, for thirty years, only to the federal, provincial and municipal taxes in effect on the date on which the project was filed, and (ii) no increase in a tax rate or new tax shall apply to the qualified company. The Value Added Tax (21%) is excluded from tax stability.

b. Income Tax

The Mining Code provides a broad tax exemption for the first five years subsequent to the granting of an exploitation concession. The Mining Investment Law grants the following additional benefits:

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[3] See Footnote No. 1.
[4] See Footnote No. 1.

(i) all development expenses are deductible;
(ii) capital investments enjoy favorable depreciation treatment as follows:

- expenses incurred to acquire equipment or build infrastructure are depreciated at 60% for the fiscal year in which the infrastructure is authorized. The remaining 40% is depreciated over the next two years. This is a radical departure from the general income tax system, under which such expenses are to be depreciated according to the depletion system over a number of years equal to the useful life of the mine;
- machinery, vehicles and equipment not included in (a) above are depreciated at 33% per year from operation start-up. This is also advantageous. Under the general tax regime, machinery, vehicles and equipment must be depreciated over their useful life.

(iii) If a company qualifies under this law, any profits its shareholders may realize from contribution of mines or mining rights as capital are exempt from income tax. The shareholder and the company receiving the assets may not sell them for a period of 5 years after contribution. Under certain circumstances, however, the Authority may authorize the sale of such assets.

- Investors may capitalize up to 50% of the assessed value of economically exploitable mining reserves certified by an authorized professional. The balance may be recorded as an accounting reserve. The capital and accounting reserve have accounting effects but are not taken into account for income tax purposes.

c. Import Duties

Any company qualified under the Mining Investment Law may import capital goods, equipment and spare parts without having to pay import duties (0% to 20%), statistics fees or any special import tax.

d. Royalties

An adhering province may charge a maximum 3% royalty on the "mine head" value of extracted minerals.

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 the following:

a. no law or regulation enacted by the federal government, the provinces or the municipalities shall prevail over tax exemptions granted to mining activities;

b. each province shall be fully authorized to call for bids to explore and develop, on a large scale, the mineral reserves located in its territory;

c. state-owned companies shall not enjoy any privileges over privately-owned companies in carrying out mining exploration and development;

d. provinces shall foster the abrogation of municipal taxes and duties which may burden mining activities;

e. provinces shall eliminate the stamp tax on documents related to prospecting, exploration, development and processing of minerals;

f. the federal and provincial governments shall take the steps necessary to avoid certain tariffs on mining activities (such as electricity, gas, fuel and transport tariffs) and distorting investment incentives.

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

6. Mining Reorganization Law

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

S. 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 a compensation in case of termination. In the absence of abuse or malicious exercise of rights a distributor is not entitled to receive 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. A fixed term over ten years, however, may be deemed invalid under certain provisions of the Argentine Civil Code.

3. Defense of Competition Law

Argentine antitrust laws, as currently applied, do not prohibit, in principle, the principal from granting exclusive distributorship appointments. Similarly, a distributor may be contractually restricted from marketing competitive products and its activities may be limited to certain geographical areas.

T. 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 therefor. 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 introduced major changes to the merger control system set forth in the Law. The main purpose of these changes was 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") regulated some provisions of the Law related to merger control procedures. The EO 89 systematizes the administrative practice developed since the Law was enacted.

2. <u>Merger Control</u>

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 liquidated companies 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., in the case of 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 stated the need to analyze the obligation to notify in these circumstances on a case by 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 first occur.

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. forbid the transaction.

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

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 as 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 as from the filing date of the 1-F Form to approve the transaction. While the information requested to the filing parties is being compiled, the above mentioned timeframes are suspended.

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

U. Consumer's Protection Law

1. Introduction

The "*Ley de Protección al Consumidor*" (Consumer's Protection Law) No. 24,240 (the "CPL") became effective 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 below 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 as 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 they are dangerous or not.

Likewise, the CPL specifies the Spanish information that the document of sale of personal property is to include, to wit:

- 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 favorable way for the consumer.

4. **Consumer's Remedies**

If the supplier of the good or service does not comply with the offer or the contract, the Consumer may, at its option:

- demand the specific performance 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 subject matter of the infringement;
- closing of the store or suspension of the service related to the infringements 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.

V. 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 be 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 fulfill the following requirements:

a. it must be incorporated and organized in accordance with the law;

b. its exclusive purpose must be the performance of insurance operations (however, the entity may also manage the assets in which its capital and reserves have been invested);

c. its fully paid-in capital must meet the minimum requirements set forth by the 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 Superintendency; and

g. it must register its articles of incorporation and by-laws with the PCR.

3. **Application Authority**

The Superintendency 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 Superintendency. The Superintendency is entrusted with the power to supervise, review and approve or reject plans, policies, actuarial calculations of minimum networth required and reserves to be maintained, etc. The Superintendency'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 Superintendency;

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 Superintendency, and (ii) the financing of a debt restructuring plan previously approved by the Superintendency;

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, the main purpose of which is being 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 30% or less of the minimum amount required must be covered in accordance with a plan approved by the Superintendency. If the proposed plan is rejected, the capital must be reinstated within 30 days. 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;

c. 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 insurance 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 become engaged 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 fulfill 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 networth 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 networth 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).

W. 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 several resolutions issues 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 the term of 10 years, by two international consortiums; *Telefónica de España*, which operates under the name of *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 of *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 –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 was issued (the "Executive Order") on September 5, 2000, and set forth the new regulations applicable to the provision of telecommunications services as from November 8, 2000. Such regulations establish an open market for new operators with no restrictions on the number of actors.

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 kind 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.

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