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D E S D E 1 8 9 7

## Doing Business in Argentina

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## INDEX

<b>Introduction</b> .....	3
<b>I. Corporate Matters - Legal Entities</b> .....	3
A. Sociedad Anónima (Corporation).....	3
(i) Incorporation and organization.....	3
(ii). Prior registration of foreign corporate shareholders.....	5
B. Sociedad de Responsabilidad Limitada (S.R.L.).....	8
C. Branch (Sucursal).....	9
<b>II. Corporate Matters - Liability</b> .....	10
<b>III. Foreign Investments and foreign exchange legal frames</b> .....	10
<b>IV. National Taxation</b> .....	13
A. Incorporation of a company or a branch in the Republic of Argentina.....	13
B. Main National taxes.....	14
(i) Income Tax (I.T.).....	14
(ii) Value Added Tax.....	15
(iii) Minimum Anticipated Income Tax.....	15
(iv) Personal Assets' Tax.....	15
(v) Credit and debit Tax.....	16
(vi) Gross Income Tax (G.I.T).....	16
(vii) Stamp Tax.....	16
<b>V. Labor and Social Security Matters</b> .....	16
A. Employment Contract Law.....	17
(i) Remuneration.....	17
(ii) Mandatory bonus (13th Salary).....	17
(iii) Vacation.....	17
(iv) Special leave.....	17
(v) Maternity.....	18
(iv) Disability.....	18
B. Termination of the employment contract.....	19
(i) Termination by the employer.....	19
(i.a) Indemnity in lieu of Notice.....	19
(i.b) 13th Salary on Notice.....	19
(i.c) Full salary corresponding to the month in which termination occurs.....	19
(i.d) Vacation Indemnity and prorated 13th salary.....	19
(i.e) Seniority Indemnity.....	19
(i.f) Emergency Laws.....	20
(i.g) Employees under special protection.....	20
(ii) Termination by employee. Resignation.....	21
(iii) Mutual decision.....	21
(iv) Retirement.....	21
(v) Death.....	21
C. Employees' Registration.....	22
D. Social Security and Related Contributions.....	22
(a) Pension and Retirement System.....	23
(b) Family Allowances Fund.....	23
(c) Unemployment Fund.....	24
(d) Medical care Law 23,660.....	24
(e) Life Insurance.....	24

(f) Insurance for Labor Hazard.....	24
E. Income Tax.....	24
F. Members of a Board of Directors.....	24
<b>VI. Economic concentrations under Antitrust Law.....</b>	<b>25</b>

## **Doing Business in Argentina**

We are providing you with an introductory overview of the main legal aspects to be considered in connection with eventual foreseen investments in Argentina.

We will therefore refer in an abstract manner to the different corporate alternatives that investors may use with regard to a foreseen investment in Argentina; and will make reference to the general aspects of the foreign investments and foreign exchange legal frameworks, as applicable as of the date of this report.

We will also briefly describe the national taxes that may apply to the proposed transactions, and provide a general description of the labor and social security requirements currently in force.

Finally, we will include a brief description regarding the applicable legal proceeding in connection with economic concentrations under the Argentine Antitrust Law.

### **I. CORPORATE MATTERS – LEGAL ENTITIES**

There are three main forms of legal entities (*Sociedad Anónima* or “S.A.”, *Sociedad de Responsabilidad Limitada* or “SRL” and *Sucursal* or Branch), that are usually recommended as the most convenient ones to be used as legal vehicles with regard to the foreseen investments.

#### **A. Sociedad Anónima (Corporation)**

##### **(i) Incorporation and organization**

The Corporation (“S.A.”) is currently the most commonly used form of business organization in Argentina.

A minimum of two partners, either individuals or companies, is required for its incorporation. The same rule applies during the life span of the so-incorporated corporation. The Articles of Incorporation and the By-Laws must be approved by the *Inspección General de Justicia* (“General Inspection of Corporations” or GIC) and registered with the *Registro Público de Comercio* (“Public Registry of Commerce”), if registered within the jurisdiction of the City of Buenos Aires.

Regarding the percentage of shareholdings, please note that certain recent particular resolutions of the GIC have prohibited shareholdings with percentages of less than 2% for the second shareholder

Notwithstanding the above, please note that according to recent provisions of our Central Bank, -and as will be explained in III below, - all funds transferred to local accounts

that do not qualify as "Direct Foreign Investment" in the terms of our foreign exchange regime may be subject to a tying up of thirty percent of the total amount and which will be deposited for a 365 days-term in a non-disposable account. In this regard, the bank intervening in the operation may challenge the qualification as "Direct Foreign Investment" of the funds sent by a shareholder that owns a shareholding percentage of less than 10%. If this were the case, the bank could proceed to tie up the thirty percent of the amounts sent by such. Accordingly, and in order to avoid any future inconveniences in this respect, we generally recommend a shareholding that is of at least in the range of 90% and 10%, which is being accepted by all jurisdictions of Corporations and will not provoke a tie up on the funds to be sent.

An S.A. must have a minimum capital of Argentine Pesos 12,000 (USD 4,000 approx). Notwithstanding said minimum amount, please note that the capital amount of the S.A. must be sufficient and in accordance with its corporate purpose. Consequently, the amount of the capital stock would depend on the corporate purpose of the entity.

The capital stock must be represented by shares of equal nominal value, expressed in Argentine Pesos. The capital must be entirely subscribed to, and 25% thereof is to be paid-in at the moment of the incorporation, and the balance may be paid-in within the following two years. The 25% must be deposited in the Banco Nación Argentina and shall be returned to the S.A. immediately after the corporation is registered.

The S.A. must have a sole corporate purpose, or a main corporate purpose together with other activities related to such main purpose.

Please take into account that no company, except for those organized solely for financial or investment purposes, may acquire or maintain an interest in one or more companies for an amount which exceeds its freely disposable reserves and half of its capital and legal reserves (25%), except where the excess interest is the result of the receipt of stock dividends or the capitalization of reserves.

Participations, whether in the form of interest, shares or stock, which exceed such amount, must be disposed of within the six months following the date of approval of the annual balance sheet that evidences an excess over such limit. This verification must be notified to the company in which the other company has an interest within ten days of the approval of said balance sheet.

Should the excess interest not be sold, the company forfeits the right to vote as well as any profits to which such excess interest may be entitled to until this provision is fulfilled.

In the event the company decides to implement an irrevocable contribution for future capital increases ("IC"), the IC may be maintained as such for a determined period of time (depending on the jurisdiction of registration of the corporation such term varies), to be counted as from its approval by the Board of Directors or Management, as the case may be. In case that, within such term, the shareholders' meeting or partners' meeting decide not to capitalize the IC, the provisions relative to creditors' opposition regime shall be applied for return purposes.

An S.A. is administered by a Board of Directors composed of one or more members and supervised by a controller or syndic, all of them nominated by the Shareholders' Meeting. The representation of an S.A. is vested in the President of the Board. The syndic must be a

certified public accountant or a lawyer, and his/her duty is to sign the balance sheets and to supervise the activities of the company on behalf of its shareholders, since the board's responsibility is to look after the company's interests.

There is no obstacle to a foreigner or an overseas resident becoming a member of a Board of Directors of a S.A., but it must be pointed out that:

- a) The majority of Board members must be Argentine residents. The number of members on the Board can be from one to a greater number, and alternates should also be appointed in an equal or lesser number. If the Board is of only one member, such member and its alternate shall have to be Argentine residents.
- b) A Board meeting must be held at least once every three months.
- c) The minimum quorum for a valid Board meeting is the absolute majority of its members.
- d) Directors not present at the meetings may authorize other members to appear by proxy, but only if the necessary quorum is obtained without the absent members.
- e) Board members –whether foreign or national- must register in the self-employed system (“régimen de trabajadores autónomos”) and obtain a CUIT number (Taxpayer Identification Number), for the purpose of complying with the current tax and social security provisions.
- f) Likewise, they must provide the guaranty that is established by Article 256 of the BAL, pursuant to General Resolutions IGJ 20/04 and 1/05 and thus envisaged in Article 75 of General Resolution IGJ 7/05. The director's guaranty must consist in bonds, public instruments or sums of national or foreign currency deposited in financial institutions or securities depositories, to the order of the corporation; or in bank guaranty or endorsements or in contingency insurance or liability insurance in favor of the same. The amount of the guaranty is the same for all the directors, and may not be less than ten thousand pesos (AR\$10,000.-) or its equivalent, for each one.

An annual regular Shareholders' Meeting must take place in order to consider and approve the financial statements for the previous fiscal year, the Board members' and syndics' (if applicable) performance and, when applicable, to elect members to the Board and syndics. The annual regular Shareholders' Meeting must take place within five months of the closing of each fiscal year.

In addition to the regular Shareholders' Meeting, an Extraordinary Shareholders' Meeting can be called at any time to consider all other matters that cannot be left for the regular meeting, e.g., reduction or increase of capital, merger or liquidation, etc.

Regarding corporate headquarters, please note that the street and number of such must be established. Pursuant to General Resolution IGJ 12/04 and as provided in Art. 7 of General Resolution IGJ 7/05 (both issued and applicable to the corporations registered within the City of Buenos Aires jurisdiction), the corporate headquarters must be the place where the administration and direction of its business effectively functions, which provision must be proved in the following first registration to be carried out.

**(ii) Prior registration of foreign corporate shareholders**

If any of the shareholders is a foreign company, it must previously register with the competent registry of commerce and demonstrate that such company has been duly organized in accordance with the laws of its country of incorporation.

This registration process term varies depending on each jurisdiction.

If registration is with the GIC, please note that, in order to be granted their registration, foreign companies, among other requirements to be fulfilled, shall provide evidence that they are able to act in their country of origin within their respective corporate purposes, this meaning that they must be able to perform in their country of origin, the same activity they are intending to perform in Argentina. Otherwise, the GIC will consider them “*offshore companies*” and deny their registration, unless such companies adopt one of the legal entity forms contemplated by Argentine Law.

In this regard, please find below the documents to be filed by any foreign corporation in order to become registered at the GIC under the rule of Article 123 of Law 19,550 –if the foreign company is to be registered within the City of Buenos Aires jurisdiction-.

- (1) Copy of the Articles of Incorporation and Bylaws, and their amendments if any, certified by the appropriate corporate officer or by whoever has authority under local law to make such certifications.
- (2) Certificate issued by the appropriate governmental authority or by whichever is the competent authority under local law to issue such certificate stating that the corporation is duly registered and currently in existence (Certificate of good standing).
- (3) Copy of a Board of Directors' resolution as per a draft we can provide, certified by the appropriate corporate officer or by whoever has authority under local law to make such certifications. This Board Resolution may be replaced by action from the appropriate corporate officer provided it is accompanied by documents evidencing her/his authority for such action.
- (4) Letter of acceptance of the officers appointed as legal representatives, a draft of which we can also provide.
- (5) Prove that the corporation is not subject to any legal prohibition or restriction to carry out its business activities or its main business activity or activities in the jurisdiction of its organization.

The abovementioned situation shall be proved with any of the following documents:

- (a) The Articles of Incorporation, the By-Laws of the corporation or any subsequent amendments thereto, as long as it is expressly stated that the corporation is not subject to any legal prohibition or restriction to carry out its business activities or its main business activity or activities in the jurisdiction of its organization;
- (b) Copies of the applicable foreign laws or regulations;

- (c) A legal opinion which proposed wording we can provide from an attorney or Notary Public authorized to act as such in the relevant foreign jurisdiction, accompanied by evidence of the continued validity of their commission, stating that the corporation is not subject to any legal prohibition or restriction to carry out its business activities or its main business activity or activities in the jurisdiction of its organization.
- (6) Proof that, as of the date of application, the corporation meets at least one of the following conditions outside of Argentina:
- (a) The existence of one or more agencies, branches or permanent representations;
  - (b) The ownership of an interest in other corporations that amounts to “non-current assets” as defined by generally accepted accounting principles, its value and the portion of the relevant corporation’s capital stock;
  - (c) The ownership of fixed assets in the place of its organization and its value.

The conditions mentioned in a) above shall be proved with a relevant certificate of existence of the agencies, branches or permanent representations, issued by an administrative authority or court of the relevant jurisdiction where any of such agencies, branches or permanent representations are located.

The conditions mentioned in b) and c) above may be proved with the corporation’s financial statements and/or an officer’s certificate taken from accounting entries in the corporation’s books, evidencing the authority of such officer. We will of course be able to provide you with a draft of such officer’s certificate necessary in order to prove the condition mentioned in b) above. If the corporation is not legally required to prepare financial statements, it may produce other documentation, the admissibility of which as evidence shall be determined by the General Inspection of Corporations.

In case the corporation cannot comply with the requirements mentioned in (5) and (6) of the main document, they could be complied with by the direct or, as the case may be, indirect controlling corporation of which the former is a “vehicle” (controlling corporation is that which possesses the necessary participations and rights to vote so as to form, by itself, the controlled corporation’s corporate will), provided that the following requirements are fulfilled:

- (1) The filing of an express declaration that the controlled corporation constitutes exclusively a “vehicle” or instrument for investment used for that purpose only by another corporation of the group that directly or indirectly exercises control over it on the basis of the corporate participation that it possesses. Such declaration must be evidenced by means of documents issued by the management or government bodies of the corporation which requests its registration in accordance with the terms of Section 123 of Law 19,550 and by its direct or indirect controlling corporation.



(2) The filing of a sworn statement, executed by the officer appointed as legal representative of the controlled corporation, regarding the following information:

- A. The organization chart of the corporate group;
- B. The identification of the partners of the “vehicle” corporation and that of its direct and indirect controllers, which should include: (i) Name and surname or corporate name; (ii) National Identity Card / Passport number or information regarding the Corporations’ authorization / registration / incorporation; (iii) Domicile or legal domicile and effective headquarters of the administration; (iv) Percentage of the participation in the capital stock and number of votes granted.

Excluded from the mentioned identification is that part of the capital stock that corresponds to shares quoted in securities exchange markets.

Please take into consideration that all of the abovementioned documents must be certified by County Clerk and legalized by the nearest Argentine Consulate or certified according to the Hague Convention of October 5, 1961 ("Apostille").

**B. Sociedad de Responsabilidad Limitada ("SRL")**

The features of an SRL are quite similar to those of an S.A. The capital of the company is expressed in quotas instead of shares and the number of partners in an SRL has a minimum of two and a maximum of fifty.

An SRL could be ready in about the same length of time and with the same costs as an S.A. and, as with S.A.’s, in the event a foreign entity wishes to become a partner of an SRL, its registration must also be complied with.

Although according to legal provisions no minimum capital is required, due to recent resolutions enacted by the General Inspections of Corporations not admitting the registration of undercapitalized companies (in connection with the corporate purpose to be developed) we recommend that a minimum capital of AR\$ 12,000 (the same as S.A.’s) should be subscribed, 25% of which needs to be paid upon incorporation and the rest within two years.

Partners' liabilities *vis-a-vis* third parties are limited to the amount of quotas held by the partner. Another difference is that SRL's can have participation in S.A.’s as well as SRL's while S.A.’s cannot be shareholders in SRL’s.

As regards the administration of SRL’s, they have no Board members but Managers and there is no need to hold a managers’ meeting every three months as opposed to S.A.’s. The representation of the company is vested in the Manager, and if there is more than one Manager the majority of them needs to reside in Argentina.

With respect to SRL’ s whose capital exceeds AR\$ 12,000, each manager shall render a guaranty of AR\$ 10,000. In the event the capital is less than AR\$ 12,000, such guaranty shall be of AR\$ 2,000.

Another difference between them is that any transfer of quotas of the SRL must be

filed with the GIC. The transfer of shares of an S.A., on the other hand, only requires the registration of the transfer in the corporate books of the S.A. and not with the GIC.

### ***C. Branch (Sucursal)***

If for any reason, you would prefer the foreign company not to be a shareholder in a S.A. or quota holder in a SRL, or wanted to incorporate a 100% owned subsidiary (which is not permitted under Argentine law, as already noted), one alternative might be to register a *Sucursal* ("Branch") and then cause its Branch to develop the foreign company's business. We

will therefore devote some brief comments to the regulations applicable to a branch.

The registration proceedings are simpler in the case of a branch than in the case of incorporation of a corporation. To register a branch in Argentina, the foreign company should, under Article 118 of the (Business Associations Law), file with the Public Registry of Commerce the following documentation:

- 1) Copy of the Articles of Incorporation and By-laws of the foreign company and their amendments if any, certified as true and complete copies by the appropriate governmental authority.
- 2) Certificate issued by the competent governmental agency stating that the foreign company currently exists and is duly registered (Certificate of good standing).
- 3) Copy of a Board of Directors' resolution, certified by the appropriate corporate officer or by whoever has authority under local law to make such certification, as per a draft which we can provide:
  - a) authorizing the organization of the branch,
  - b) appointing the legal representative or representatives of such branch in Argentina, and
  - c) specifying the amount of capital assigned to it (if applicable).
- 4) Personal data required of the corporate officers appointed as branch representatives: name and surname, nationality, date of birth, passport number, address, marital status and profession.
- 5) Two different Powers of attorney should be granted by the foreign company:
  - a) one power of attorney to the local representative or representatives of the foreign company 's Argentine branch. Such power of attorney may be as broad as the company may deem convenient. Please note that for the time being the GIC does not require that the local representative be an Argentinean resident; therefore, a foreigner could be appointed as such.
  - b) And the other one to empower the person/s that will undertake all the proceedings for the necessary registrations of the branch.

A statement from the appropriate corporate officer could replace the Board Resolution

if it is accompanied by documents evidencing his/her authority for such action.

All documents must be notarized, certified by County Clerk and legalized by the nearest Argentine Consulate; or certified according to the Hague Convention of October 5, 1961 ("Apostille").

Once the Public Registry of Commerce approves the registration, the foreign company would be able to act through its Argentine branch.

The management and representation of a branch is vested in the person or persons appointed by the board of the parent company, as noted in 3) b) above. The foreign company can be sued in Argentina in the person of the representative. In general, the representatives of a branch and the members of the Board of a S.A. have similar responsibilities.

A subsidiary and a branch have similar accounting requirements, since both S.A.'s and branches must keep separate accounting records for their Argentine operations. Corporate controls by the GIC, however, are simpler in case of a branch. Statutory reporting requirements and controls imposed on S.A.'s make them more complicated and expensive to run than branches. Furthermore, the management of a branch is simpler than that of a S.A., since branches do not have a Board of Directors and hold no shareholders' meetings, thus avoiding the obligations implied by such corporate bodies.

## **II. CORPORATE MATTERS – LIABILITY**

In an S.A. or an SRL, shareholders' liability is in principle limited to their subscribed capital. As an exception, the theory of the "disregard of the legal entity" applies when the corporation is used fraudulently as a mere instrumentality of its shareholders. Thus, the law assures shareholders' limited liability insofar as a corporation operates in the way permitted and contemplated by law. This interpretation stems from two legal provisions:

Business Associations Law, Article 54, third paragraph: "the activity of a company that attempts to conceal the carrying out of functions different from the purpose of the company, constitutes a mere tool to violate the law, public order or good faith, or to frustrate rights of third parties, and so will be imputed directly to the shareholders or to those who control the company in a way that made such activity possible, who shall be unlimited and jointly liable".

Insolvency Law N° 24,522, Article 161: "The bankruptcy shall be extended to...  
2. Controlling persons of the bankrupt company, when they have unlawfully deviated the corporate interest of the controlled company, subjecting the latter to a unified management to the benefit of the controlling persons or of the economic group the controlling persons belong to".

From these provisions it can be inferred that three elements are necessary to trigger the application of the disregard theory: corporate control, fraud or misconduct and injury or unjust loss to third parties. It is worth pointing out also that the jurisprudential construction of the theory is restrictive, i.e., in case of doubt it is not to be applied.

## **III. FOREIGN INVESTMENTS AND FOREIGN EXCHANGE LEGAL FRAMES**

The Argentine Constitution grants foreigners the same right to work, conduct business, buy, own and sell property as it does to Argentine nationals. In addition, it declares that property is inviolable and no inhabitant may be deprived of it except by virtue of a judicial provision.

Furthermore, our country has a specific legal framework regarding Foreign Investments, which is mainly contemplated in the National Foreign Investments Act (“NFIA”).

According to the NFIA, “any capital contribution coming from foreign investors assigned to an economic activity to be developed in the country”, as well as “the acquisition of any participation in a local company by Foreign Investors” shall be considered a Foreign Investment. In addition, the NFIA defines Foreign Investors as “all individuals or entities domiciled outside the national territory, holding a foreign capital investment in Argentina”. Moreover, any individual or entity domiciled outside the Republic, who directly or indirectly owns more than forty nine percent of the capital stock of any company domiciled in Argentina, or directly or indirectly controls the number of votes necessary to prevail in stockholders partner’s meetings of such company, shall be considered a Foreign Investor by section 2.3 of the NFIA.

Within this framework, Foreign Investors, as defined above may (i) invest without prior approval or registration requirements; (ii) have the same access to incentive programs as local investors; (iii) have unrestricted access to all economic sectors, with exception of the mass media; (iv) can adopt any legal entity formation allowed by the Argentine Business Associations Law; and (v) have the same access to credit as local companies.

Currency circulation is regulated by a series of Decrees and Communications enacted by the Executive Branch and the Argentine Central Bank (ACB) respectively, which establish a regime applicable both to local and foreign currency, coming in and out of the country.

Although Argentina has a free foreign exchange market, the abovementioned regime establishes certain restrictions concerning both the transfer of funds in and out of the country. As a result of such restrictions, although foreign investments may be freely done in foreign currency, all transfers of funds to our country made by non-Argentine residents shall be registered for information purposes only.

Any transaction subject to ACB’s regulations that the parties intend to complete not following such regulations, should be previously authorized by the ACB in order to avoid being subject to any sanction.

In addition, this regime contemplates a restriction to the remittance of such registered funds abroad before a 365-days’ term, whenever such funds were not declared as “Direct Foreign Investments” (“DFI” -as defined below-), among other exceptions contemplated by the applicable regime. During that term, 30% of such funds will be tied up in a Dollar-denominated non-transferable and unremunerated statutory reserve (*encaje*), which cannot be used as a guarantee or collateral to any kind of debt.

In those non-exempt cases, after the 365 days period elapses, the mentioned deposit will mature and the funds included therein will be freely disposable within Argentina and subject, for their remittance abroad, to the other applicable foreign exchange regulations.

Following the International Monetary Fund's definition, Argentina considers as DFI any participation in a local company greater than 10% of its capital stock or votes. Furthermore, once such percentage is invested, every subsequent contribution made by the Foreign Investor will be qualified as a DFI irrespective of its amount or percentage. Please note that there are other provisions applicable to DFI that do not imply participations in the capital stock of local entities (i.e. real estate transactions).

Please note the convenience of developing the investments under analysis through the incorporation of a local company (preferably a Corporation or a Limited Liability Company), since through such local company the investments to be made may benefit from certain tax grants and may be considered as DFI, consequently avoiding the 365-days' term restriction and the tied up deposit system referred to above.

Other exceptions to the aforementioned regulations are contemplated if the funds transferred to Argentina:

- (i) will be used in order to acquire shares or debt issued in an initial public offering in Argentina (other than debt issued by the ACB);
- (ii) are originated on the repatriation of export payments or the disbursement of export pre-financing transactions; and are funds corresponding to external working capital financings when: (A) the foreign creditors are certain international credit agencies (i.e. Eximbank); and/or (B) the borrower declares before the ACB that the disbursed amounts will be applied to (x) the simultaneous acquisition of foreign assets (on certain limited basis), and/or (y) the repayment of other foreign debt, and/or (z) to make investments in local non financial assets (as defined by the ACB).

In this regard, no prior ACB approval will be required for Argentine residents (including local companies) to acquire the corresponding foreign currency in order to be transferred abroad if such transactions: (a) do not involve amounts over a monthly limit of US\$ 2MM or the total amount in pesos resulting from the sum of (i) payment of export taxes, plus (ii) three times the amount paid for financial transactions taxes (Tax over credits and debits in current banking accounts); and (b) the transfer concepts are (i) real estate offshore investments, (ii) loans granted to non-Argentine residents, (iii) disbursements of direct offshore investments by Argentine residents, (iv) offshore portfolio investments by natural persons, (v) other offshore investments by Argentine residents, (vi) acquisition of hard currency to be held within the country, and (vii) acquisition of travelers checks.

Further to the amounts mentioned above, the ACB has also established special limits for the repatriation of investments undertaken (without previous authorization) by non-resident holders of investments made in Argentina, under the following concepts:

For: (i) residents' external debts due in connection with Argentine imports of goods and services and financial services originated in external loans with non-residents, (ii) recovery of credits of local bankruptcies, to the extent that the non-resident individual or company may have been the creditor of the bankruptcy, (iii) sales of direct investments in the private non-financial sector, (iv) the definitive payment of the direct investment in the country, in the private non-financial sector; (v) services or liquidation from the sale of portfolio investments such as shares or holdings in local companies and others.

The amounts to be transferred are limited to the maximum amount equivalent to US\$2 million, for each calendar month per person, except in the case referred to in (v) above, where the amount is limited to US\$ 500,000 for each calendar month per person. The abovementioned limits can only be exceeded in case of payments owed by residents to non-residents for imports or services provided by non-residents for which no limits are imposed. These amounts can be freely transferred abroad.

For all other cases not mentioned under the regulations referred to above, Investors who are non-Argentine residents are allowed to purchase up to US\$5,000 per month without giving any particular reason (accordingly to ACB, Communication A3944 -as amended-, these restrictions are not applicable to International Credit Institutions such as IMF, WB, IDB, etc.).

Notwithstanding the abovementioned restrictions, Argentine law permits a local subsidiary to freely transfer dividends to its parent company, after passing a shareholders' resolution and having the corresponding balance sheet approved by an Argentine public accountant. Furthermore, please take into account that the distribution of dividends is not taxed, since income tax (at a rate of 35%) is levied on the company and not on the shareholders.

Transactions celebrated between the local company and its parent company will be deemed to be entered into between independent parties when its terms and conditions are similar to those ruling in the market (arm's length theory).

Finally, in order to develop its economic relations, Argentina has entered into a series of Bilateral Investment Treaties (BIT's), with countries such as: Austria, Armenia, Australia, Bolivia, Bulgaria, Canada, Croatia, Cuba, Chile, China, Denmark, Ecuador, Egypt, Finland, France, Germany, Hungary, Indonesia, Israel, Italy, Jamaica, Luxembourg, Malaysia, Netherlands, Peru, Poland, Portugal, Rumania, South Korea, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, USA, Vietnam, Venezuela, Senegal and Morocco, which foresee equal treatment for foreign investors from the other signatories, the adoption of certain measures in order to avoid double taxation originating from the economic activities developed abroad by their nationals and in certain cases even contain the "most favored nation" treatment.

#### **IV. NATIONAL TAXATION**

Below you will find a summary of the rules that govern the main national taxation aspects.

This description is based on the provisions contained in the tax laws and regulations of Argentina as in force on the date hereof, so they are subject to any modification that may be made to Argentine laws and regulations in the future.

In this analysis we shall discuss: (i) fiscal obligations arising from the incorporation of a new company or the establishment of a branch in the Republic of Argentina; and (ii) main national taxes that might apply to the foreseen transactions and investments. Please note that once we receive further details of the foreseen transactions and investments we will be able to define the applicable taxes.

**A. Incorporation of a company or a branch in the Republic of Argentina.**

The incorporation of an S.A. or an SRL needs to be registered with the Public Revenue Federal Administration (hereinafter AFIP/DGI).

The company will have to be registered with AFIP/DGI as taxpayer for Income Tax, Minimum Anticipated Income Tax and Value Added Tax purposes.

In turn, if the company is an employer it will have to be registered with AFIP/DGI as taxpayer under the Social Security Regime.

The registration for the purpose of the abovementioned taxes and under the Social Security Regime is made in a single proceeding by filing FORM 460/J.

Likewise, the company will have to be registered with the Tax Authorities of the respective Provinces -or of the City of Buenos Aires- where it will develop its activities, for the purpose of paying the respective provincial taxes in such jurisdictions.

The branches of foreign companies have the same taxation treatment as local companies, therefore they will have to be registered with AFIP/DGI and with the Provincial Revenue Administrations of the place where they develop their activities.

Below we shall analyze the main national taxes that may be payable by a local company or the branches for the development of activities in Argentina.

**B. Main National taxes**

**(i) Income Tax (IT)**

The company or the branch responsible for performing the activities will have to pay income tax on all the income obtained.

This tax affects the income obtained by the local company, both income from profit obtained in the Republic of Argentina and those abroad (world revenue criterion). As regards the payment of taxes on income obtained abroad it is possible to compute as payment to the account of the local IT the payments of similar taxes made in the source country of the income.

The IT is determined by applying a 35% rate on the net income obtained by the company. In the event that during the fiscal year the company has losses, such losses may be used to be set off against the IT to be determined during the following 5 years. The IT law allows to deduct from the income obtained by the company, the expenses necessary to obtain and maintain the taxable income. Among the expenses capable of being deducted are those necessary for the start-up of the company.

It is important to mention that at present the distribution of dividends is not subject to IT. This means that the income obtained by the company will only be taxable for IT purposes as regards the company but the IT will not affect the distribution of dividends to shareholders

by the company. If the shareholders are foreigners (both legal and natural persons) the income will not be subject to withholding upon their remittance abroad.

The determination and payment of the IT will be made by preparing and filing tax returns. The IT has to be paid in 12 monthly advanced payments and one payment for the remaining balance of the corresponding IT which may still be pending after the payment of such advances.

### **(ii) Value Added Tax**

The sale of products in the Republic of Argentina, and their importation, , as well as the supply of services and technical assistance is levied with the Value Added Tax (VAT).

This means that the company to be incorporated or the branch will be considered a taxpayer for VAT purposes, and will have to determine a tax debit for the taxable events in connection with the company's activity and to compute a tax credit for the purchases and supplies affected by the VAT.

In the event of services rendered from off-shore, the local user will have to pay the tax that affects the supply of such services.

The general VAT rate is 21%. In the case of imported goods, the VAT will have to be paid at such time as the importation is bound for consumption, plus 10% by way of importation VAT in addition to the 21%.

Finally, it should be stated that the VAT credit originated because of the fact that in a certain tax period the number of acquisitions of goods and supplies of services affected by VAT exceeds the fiscal debits resulting from the sale of products or the supply of services affected by the VAT, may be applied to the payment of the VAT for subsequent fiscal years.

### **(iii) Minimum Anticipated Income Tax**

The Minimum Anticipated Income Tax (MAIT) is determined on the basis of the company's assets. The rate is 1%.

The IT determined for the fiscal year for which the MAIT is liquidated may be computed as payment on account of MAIT. This means that the actual payment of the MAIT will be made exclusively in the fiscal years in which the taxpayer does not have to pay IT, as a result of loss carried forward for tax purposes.

### **(iv) Personal Assets' Tax**

The participation of foreign companies or individuals in local companies will be levied by the Proprietary Assets Tax, the local company being the one bound to pay this tax. This is the case of companies whose shareholders are foreign subjects. The tax will be determined by applying a 0.5% rate on the proportional asset value of the indicated participation.

We suggest that you analyze the country where the shareholders of the foreign company would be located, since according to various international treaties it has been



admitted that the payment of this tax does not apply when the participants in local companies are natural or legal persons resident in any of the signatory countries under the treaties involved. The mentioned treaty could be used as an argument for not paying the subject tax.

The tax is equally applicable in the event of local branches of foreign companies.

**(v) Credit and debit tax**

Law 25,413 established a tax applicable on (i) debits and credits of any kind made in accounts opened with entities comprised in the Financial Entities Law – except for those expressly excluded by the law and its regulations; and (ii) fund activities and deliveries - made through the payment systems organized instead of the use of current accounts – provided they are made on ones own and/or third parties' account in the performance of economic activities. Therefore, this tax will be applicable on banking credits and debits.

It should be taken into account that Anti-evasion Law 25,345 requires that any payment made for sums over AR\$1,000 be made through banking mechanisms, so that any payment above this amount will trigger the application of this tax.

**(vi) Gross Income Tax (GIT)**

The GIT affects the usual exercise of trade, industry, profession, craft, business, lease of goods, hiring of works or services or any other activity for value, regardless of the result obtained and the nature of the subject who performs it, when they take place in Buenos Aires or in any other province of the Argentine Territory.

The tax is applied on the gross income – total value or amount accrued in the fiscal year as a result of the levied activity – though a few deductions are allowed (for instance bad debts, returns, allowances and cash discounts, etc.).

When income is obtained or expenses paid in different local jurisdictions, the Multilateral Agreement applies, this meaning that the taxable basis is distributed among the various jurisdictions involved.

The GIT rate varies according to the jurisdiction where the activity is developed, from 1.5% to 5.5%.

**(vii) Stamp Tax**

The stamp tax levies the instrumentation – formal legal mechanism of willingness expression – of contracts in the territory of the province, or of contracts that are instrumented elsewhere but produce effects in the territory of a certain jurisdiction.

This tax is not applicable in the City of Buenos Aires, the Province of La Rioja and the Province of Tierra del Fuego.

Regarding provincial or local Tax implications such should be further analyzed, once the location of the real estate properties to be acquired has been defined.

## V. LABOR AND SOCIAL SECURITY MATTERS

Please find below a brief summary of the legislation that governs employment contracts in Argentina.

### A. Employment Contract Law

The main conditions of employment that all employment contracts must comply with are set forth in the Employment Contract Law N° 20,744 (ECL). The ECL governs the following aspects:

#### (i) Remuneration

The remuneration can be paid as monthly salary, daily wage settled weekly or fortnightly, commissions on sales, participation in profits, etc. Board and lodging for the employee, mandatory bonuses, voluntary bonuses and travel allowances not supported by

vouchers are also considered as forming part of the salary. The remuneration must be paid within four working days after the end of the month or fortnight or three working days when paid weekly.

#### (ii) Mandatory bonus (13th. Salary)

A 13<sup>th</sup> monthly salary is due in Argentina. It is paid in 2 installments, on June 30 and December 31. Each installment is equal to 50% of the best salary paid to the employee during the first and second semester respectively. When the employment contract is terminated for whatever reason, the employee is entitled to a prorated 13<sup>th</sup> salary.

#### (iii) Vacation

Employees are entitled to the following annual vacation periods in accordance with the length of service:

- Up to 5 years, 2 weeks (14 consecutive days)
- From 5 to 10 years, 3 weeks (21 consecutive days)
- From 10 to 20 years, 4 weeks (28 consecutive days)
- Over 20 years, 31 consecutive days

To be entitled to this vacation period the employee must have worked at least 6 months during the corresponding calendar year. If the employee has rendered services for less than 6 months, he is entitled to one day of vacation for every 20 days worked.

There are specific collective bargaining agreements that impose longer vacation periods.

The employee is entitled to receive a vacation salary to be paid before the start of the leave, which amount is calculated by dividing the salary by 25 and multiplying this result by the number of days of vacation.

#### (iv) Special leave

Employees are granted special leave of absence in the following cases:

- Birth of a child, 2 days, one of which must be a working day
- Marriage, 10 calendar days
- Death of spouse, children or parents, 3 days, one of which must be a working day
- Death of brother or sister, 1 work day
- Examinations at secondary or university levels, 2 days for each exam up to a maximum of 10 days per calendar year.

Collective bargaining agreements can extend the mentioned periods and/or establish other cases of special leave of absence to be granted.

(v) **Maternity**

It is forbidden for pregnant women to work during a period of 45 days before the due date and 45 days after the birth of the child, or 30 days before and 60 days after at the employee's choice. During this period the employee is paid a Family Allowance by a special State Fund (it is not a salary).

After the restriction period, the employee may return to work in the same position or take leave of absence for up to 6 months without pay. During this period her employer must keep her job available. The employee may also resign, in which case she is entitled to 25% of the best salary received during the last year multiplied by the number of years of service or part exceeding three months, with a maximum of one minimum salary per year of service.

(vi) **Disability**

The ECL states that in the case of an employee's illness or disability (not related to the work), the employment contract will continue in full force and effect and the employee will be entitled to receive the usual salary payments. The employer's obligation to continue such payments will extend for a period of 3 months, in the case of seniority not exceeding 5 years, or 6 months, in the case of higher seniority.

The law also provides that when the employee has family obligations (direct family dependants), he will be entitled to receive the aforesaid payments for up to 6 months, in the case of seniority not exceeding 5 years, or 12 months, in the case of longer seniority, likewise providing that the employer is obliged to maintain the position for 1 year as from the termination of the period of mandatory salary payments, it being understood that no unjustified dismissal may take place during such term.

As of the expiration of the aforesaid period, both employer and employee have the right to terminate the contract by notice to the other party, without severance.

Notwithstanding the foregoing, in the event that during the period of contract maintenance the illness is declared a permanent disability, if employer were not in the position to assign new duties in accordance with the remaining ability, the employer will be compelled to pay a severance equal to half of the normal amount provided by our labor law as seniority indemnity in case of termination without cause. The ECL further provides, that the employee will be entitled to receive the total seniority indemnity if the employer, being in the position to assign new duties, were not willing to do so.

In the event that the employee has become permanently and absolutely disabled, pursuant to our law, the employee is entitled to severance of an amount equivalent to 100% of the seniority indemnity.

**B. Termination of the employment contract:**

**(i) Termination by the employer**

If the employer decided to terminate the employment contract without cause, the employee is entitled to special *severance* payments.

**(i.a) Indemnity in lieu of Notice**

Section 231 of the ECL provides that notice of contract termination has to be given: a) 15 days in advance for employees having up to 3 months of service; b) 1 month in advance for employees having up to 5-years of service, and c) 2 months for employees with longer seniority. Failure to give any such notice will result in the payment of indemnity of an amount equal to that which would have corresponded to the employee during the aforementioned periods.

**(i.b) 13<sup>th</sup> Salary on Notice**

It is an amount equivalent to 8.33% of the amount payable as notice.

**(i.c) Full salary corresponding to the month in which termination occurs**

The total salary for the month in which the termination takes place has to be paid, irrespective of the day of the month in which the decision is notified.

**(i.d) Vacation Indemnity and prorated 13<sup>th</sup> salary**

The employee is also entitled to the payment of an indemnity equivalent to the salary corresponding to the vacation period in proportion to the part of the year worked, as well as to the prorated 13<sup>th</sup> salary. *These amounts are due regardless of the manner in which the termination of the employment has occurred.*

**(i.e) Seniority Indemnity**

Section 245 of the ECL provides that if an employee contract is terminated without cause, the employer will have to pay an indemnity equivalent to 1 monthly salary for each year of service or part over 3 months, on the basis of the best ordinary usual monthly remuneration accrued during the last year or during the period of service if it is shorter. A *cap* is established of three times the amount resulting from the average monthly remuneration provided under the applicable Collective Bargaining Agreement for the personnel covered thereby. For those employees excluded from Collective Bargaining Agreements, the cap established in the previous paragraph should be either the one corresponding to the Collective Bargaining Agreement of the activity, applicable to the facility where the employee renders services, or to the most favorable Collective Bargaining Agreement if there were more than

one. The *minimum amount* to be received by an employee, as severance payment, may not be less than one monthly salary, calculated on the basis of the best ordinary usual monthly remuneration accrued during the last year of service.

On September 14, 2004 the Argentine Supreme Court in the case “VIZZOTI, Carlos A. vs. AMSA S.A.” declared that the cap for calculation of the seniority indemnity must not be less than 67% of the computable best ordinary usual monthly remuneration.

**(i.f) Emergency Laws**

As from January 6, 2002 emergency regulations, according to Section 16 of Law 25,561 have suspended dismissals for no justified cause. Law 25,972 has extended said suspension until the Government’s Statistics Agency publishes an unemployment rate of less than 10%.

At the present time, according to Law 25,972 and Decree N° 2,014/2004 if a termination took place in violation of said provision, the seniority indemnity (see point i.e above) is increased by 50%.

Decree 264/2002 sets forth that, while emergency regulations are in force, companies may not terminate employment without cause if they have not previously filed the administrative procedure with the Department of Labor.

Please note that, said suspension does not apply to employees hired after January 1<sup>st</sup> 2003, provided that their hiring has increased the employer’s payroll compared to December 31<sup>st</sup> 2002.

**(i.g) Employees under special protection**

Certain employees are entitled to special protection in specific situations such as pregnancy, union representation and matrimony; in these cases, the amounts due as severance payments are substantially increased.

- **Pregnant women** are protected by the ECL as long as they follow certain formal requirements. A pregnant employee must deliver to the employer a written notice of her status, along with a certificate issued by her physician, which has to state the due date.

If the employment agreement is terminated without cause within the period of 7 months and ½ before and 7 months and ½ after the date of birth or pregnancy interruption, the ECL presumes that the termination has been motivated by the pregnancy. If that were the case, a special indemnity equal to 13 salaries is due, in addition to the normal severance payments. The employer carries the burden of the proof if he claims the termination has been motivated by circumstances other than the pregnancy.

- **Employees who get married** are also protected by law, as long as they deliver to the employer a formal notice informing the date of marriage. If the employment agreement is terminated without cause within the "protection period" (3 months before and 6 months after the marriage), the employee is entitled to a special indemnity consisting of 13 monthly salaries in addition to the normal severance payments.

- **Trade union representatives** are also entitled to special protection under the provisions of the Trade Union Law # 23,551 (TUL). Section 53 of TUL provides that the employer cannot terminate, suspend or modify the conditions of employment of the trade union representatives who enjoy stability of employment under the TUL regime, when the grounds for termination, suspension or modification are not simultaneously applied to all personnel.

Employees who hold elective positions in trade union associations cannot be terminated in the course of 1 year as from the expiration of the term of their office, unless there are justified grounds for termination (the employee elected as a candidate for a position is protected for a period of 6 months as from his candidacy).

The employer has to prove the existence of a justified cause for termination and has to obtain a judicial resolution so as to exclude the trade union protection, through a special procedure established by law.

Infringement by the employer of the above mentioned protection entitles the employee to file a lawsuit claiming reinstatement and back pay (the earnings accruing during the legal procedure). If the judicial decision of reinstatement is not complied with, the judge may

apply a fine for each day of breach. However the employee may opt to terminate the employment contract and to collect (i) the normal severance payments and (ii) an amount equivalent to the salaries that would have corresponded to him during the time still to run in his term of office plus the following year of stability in his employment.

**(ii) Termination by employee. Resignation**

The employee may terminate the contract by resignation. No severance is due in this case (except for items specified in point B i.d above). The employee has to give notice of his resignation 15 days in advance either by telegram or before the Department of Labor.

**(iii) Mutual decision:**

Both parties may terminate the contract at any time by mutual consent. The ECL specifically requires an agreement to be signed before a notary public or executed before the Department of Labor.

**(iv) Retirement:**

The employment contract may be terminated when the employee has reached the minimum age required by law in order to obtain the benefit of ordinary retirement. The employer will have to deliver a notice in order to inform the employee that he is under the obligation of starting the procedures for retirement. After the expiration of the term of 1 year, the employer may terminate the employment contract without severance.

**(v) Death:**

The employment contract is also terminated in the case of death of the employee, but in this event certain family dependents are entitled to a special indemnity, of an amount equivalent to 50% of the normal amount of the seniority indemnity.

It is important to take into account that if the death of the employee occurs as a consequence of a work-related accident, the family dependents are also entitled to a special indemnity under the provisions of Law No. 24.557.

**C. Employees' Registration**

(i) According to General Resolution N° 1,891/2005 of the Federal Tax Authority (AFIP) the hiring or termination of an employment contract must be reported to the AFIP in order to be included in the Social Security Registry.

Notice of the hiring must be given to the AFIP (via Internet) before the starting date, except in the case of special activities included in Annex I of said Resolution in which case the communication can be sent up to the same day.

The termination of an employment contract must be also reported to the AFIP five consecutive days following the termination date.

For each communication, the AFIP will issue an acknowledgment of receipt in original (to be kept by the employer) and duplicate (for the employee).

(ii) Section 52 of the Employment Contract Law (ECL) provides that the employer must keep a Special Labor Ledger (registered and sealed by the Department of Labor) in order to register the employer and employee's particulars, the salaries and other aspects of the employment.

Usually employers replace the mentioned Special Labor Ledger by a Registration Form in order to introduce the information through a computer program. The authorization for the replacement must be granted by the Department of Labor.

**D. Social Security and Related Contributions**

According to Law 24,241 and Decree 814/2001, remunerations are subject to social security contributions to be paid both by the employer and the employee, as well as to withholdings on account of income tax.

However, as of the date of this memorandum, the maximum amount subject to employee's contributions is equal to 60 "MAAP" (mandatory average affiliate payment). The amount of each MAAP is of AR\$ 80; therefore the total amount subject to employee's contributions and withholding rises to AR\$ 4,800. Please be informed that the MAAP and the maximum limit may be adjusted by the Authority every year.

The following chart shows some of the percentages of the employers' contributions to the social security system:

	<b>Employee's Contributions (to be deducted from the salary)</b>	<b>Employer's Contributions (additional to the salary)</b>

1) Pension and Retirement System	11% for employees registered in the Public Retirement System or 7% for employees registered in the Private Capitalization System	21% for employers whose main activity is performed in the scope of services (including the employers whose main activity is contained in “Services” or “Commerce” activity according to Resolution 24/01 SPyME as long as the annual sales exceeds in all cases AR\$ 48.000.000 According Decree 1009/2001). 17% for another employers not included in the mentioned activity
2) Medical Protection for Retired People	3%	
3) Family Allowance Fund	----- ---	
4) Unemployment Fund	----- -	
5) Medical Care Law N° 23.660	3%	6%
6) Life insurance for employees	----- --	0,027%
7) Insurance for Labor Risks	----- --	According to the activity

**a) Pension and Retirement System:**

Law 24,241 governs the “private retirements system”. The employee may opt to direct his/her contributions either to the public retirements system conducted by the Government (the distribution system) or to the private retirements system (a capitalization account), also selecting a private Administrator of Retirements and Pensions Funds.

Employee’s contributions for those registered in the Private Capitalization System will be from July 1<sup>st</sup> 2006 (9%) and from October 1<sup>st</sup> 2006 (11%). The 11% remains for the employees included in the Public Regime conducted by the Government.

**b) Family Allowances Fund:**

Employers are legally required to provide family allowances to their employees. These allowances are paid monthly by the employer together with the employee's remuneration or directly by the Social Security National Administration (ANSES) according to the new System of Family Allowances (SUAF) established by Resolution N° 641/2003 and correspond to each child, primary and secondary schooling (paid yearly), pre-natal allowance and handicapped children’s allowance when applicable. A one-time allowance for marriage, birth or adoption is also paid by the Fund.

**c) Unemployment Fund:**



This fund is financed by the employer's contribution on their total gross payroll.

**d) Medical Care Law 23,660:**

The Social Welfare Funds provide medical care to all employees. The medical care is intended to cover the employees included in the scope of representation of each collective bargaining agreement and it is provided by Social Welfare Funds administered by the unions. Private medical coverage can be provided to personnel not included in such collective agreements (management).

**e) Life insurance:**

Employers are obliged to insure their personnel against death or total, permanent and irreversible incapacity for a minimum amount, which is adjusted periodically by the Government. The employer is free to choose any local insurance company and absorbs the total cost of the premiums involved.

**f) Insurance for Labor Hazards:**

Pursuant to Law 24,557, employers must cover this risk by purchasing insurance from specially organized and licensed Labor Hazards Insurance Companies (or ARTs) or qualify under strict self-insurance parameters.

**E. Income Tax**

Employers are obliged to withhold income tax from their employees' remuneration when the annual amount exceeds a certain minimum set monthly by the Tax Authorities. The employee may inform his employer of deductions he may claim, interest paid, life insurance premiums, investments in housing plans, etc., which should be applied in computing his income tax. These withholdings should be paid to the Tax Authorities by the 7th. day of the following month. At the end of each calendar year the employee must present to his employer a form showing the computation of his annual income tax. Before April 1 of the following year employers must file with the Tax Authorities a form summarizing the individual forms, together with a copy of each of these.

**F. Members of a Board of Directors**

As mentioned in I A.e) above, pursuant to section 2 subsection b) of Law N° 24,241 all such persons acting as members of a board of directors are obliged to register as self-employed workers.

The registration must be fulfilled through the Federal Tax Authority (AFIP) in order to obtain the CUIT (Unique Tax Identification Number).

As self-employed workers, the directors have to contribute to the Pension and Retirement System. The monthly amount of the contribution depends on the number of employees employed in the Company (Category "D" – AR\$ 245,12 - for companies with less than 10 employees employed; Category "E" - AR\$409,28 - in the case of companies with

between 10 and less than 20 employees employed and Category “F” - AR\$ 572,48 – for companies with 20 or more employees employed).

## VI. ECONOMIC CONCENTRATIONS UNDER ANTITRUST LAW

Please find below a preliminary description regarding the main legal framework as applicable to economic concentrations in Argentina.

Firstly, it should be noted that the system established by Law No. 25,156 (the Antitrust Law) -Chapter III, “Control of Concentrations and Mergers”- is based on control of a *preventive nature*, carried out by the Antitrust Commission (“*Comisión Nacional de Defensa de la Competencia*”-), a specialized administrative body acting within the Ministry of Finance) over certain transactions described in the Antitrust Law that may constitute “*economic concentrations*”.

In this regard, Section 6 of the Antitrust Law establishes that “*economic concentration*” means the taking of control of one or more businesses, by any of the following means:

- (i) Corporate mergers
- (ii) Transfer of the commercial assets of the business
- (iii) Purchasing ownership or any other rights to stock or any capital interest or debt giving any right to convert them into stock or capital interest, or any influence on the decisions of the issuer, where the purchase gives the acquirer control of or substantial influence over the issuer;
- (iv) Any other agreement or act by which the assets of a business are actually or legally transferred to any person or economic group, or by which it acquires decisive influence over the ordinary or extraordinary management decisions of a business.

Under Section 8 of the Antitrust Law, the parties are obliged to file a particular transaction for clearance with the Antitrust Commission, if the circumstances stated herein below are simultaneously met.

- (i) The transaction must be an “*economic concentration*” in terms of the Law, and
- (ii) the volume of the joint business of the concentrated companies, calculated over the annual net sales (turnover), must reach in Argentina the amount of AR\$ 200,000,000 (after deducting any discount on sales, VAT and other taxes directly related to the volume of the business). In order to determine whether the turnover reaches in Argentina such amount, the following should be taken into account (a) the turnover of the companies controlling the “Acquired Company” in Argentina and (b) the turnover of the Argentine company/ies where the “Acquiring Company” or its controlling companies hold direct or indirect control (i.e. companies where “the purchaser” or its controlling companies hold –whether directly or indirectly:
  - 1. More than half of its stated capital or of its outstanding capital;
  - 2. The power to exercise more than half of the voting rights;

3. The power to appoint more than half of the members of the surveillance or administration committee or of the body which legally represents the company, or
4. The right to decide/direct the company's activities.)

Notwithstanding the above, the aforementioned Law states that, even if the transaction constitutes an “*economic concentration*” and it exceeds the turnover threshold established by the Antitrust Law, the Transaction will be exempted from the filing obligation in the event:

- (i) Of a purchase of a single business by a single foreign business not previously holding any assets or stock in other businesses in Argentina).
- (ii) Of a purchase of a business wherein the purchaser already holds over 50% of the stock.
- (iii) Of a purchase of bonds, debentures or non-voting stock or corporate debt.
- (iv) That the amount of the transaction **or** the value of the assets located in Argentina being absorbed, acquired, transferred **or** controlled as a consequence of the transaction do not exceed the amount of AR\$ 20,000,000.

It should be pointed out that pursuant to Section 3 of the Antitrust Law, in the event an act, contract or agreement entered into abroad, has or may have *effects in Argentina*, there is still the obligation to give notice of said fact to the Antitrust Commission.

In this sense, the Antitrust Commission through its “*Consultative Opinions*”, has considered that a particular transaction taking place abroad “*will have effects in Argentina*” if the foreign companies involved in such transaction have control over Argentine companies and assets in a direct or indirect manner.

Please note also that according to Section 8 of the Law, the filing for clearance before the Antitrust Commission may be carried out either “*previously*” or within five (5) working days following the “*conclusion of the agreement*” (closing date). Failure to timely file the request of clearance before the Antitrust Commission is subject to fines that may reach a maximum of AR\$1,000,000 (Argentine Pesos one million) per day to be counted as from the date that the omitted filing should have been carried out according to the applicable regulation.

Finally, we should point out that, once the complete filing is made, the Antitrust Commission, within a maximum of 45 working days, may either: (a) authorize the transaction; (b) condition the approval of the transaction to compliance with certain divestitures; or (c) deny its authorization, on the grounds that the economic concentration may damage the general economic interest.

We hope the information presented herein is of interest to you.

Buenos Aires, September 2006.