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LEGAL FRAMEWORK FOR DOING BUSINESS IN ARGENTINA

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The information contained in this booklet deals in general terms with the topics it covers and is not intended to render legal advice or to be relied upon as specific legal advice to any particular case. Unless otherwise indicated, the laws and regulations referred to in this booklet were those in force as of March 2005. Please contact us with any specific advice required on any matter, or in case you would like to receive further information regarding any of the issues covered herein.

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I. MONETARY POLICY AND FOREIGN CURRENCY

A. EXCHANGE MARKET¹

With the enactment of Law No. 25,561 (January 6, 2002) a public emergency was declared in Argentina in connection with social, economic, administrative, financial and exchange matters, and the existing fixed one-to-one exchange rate between the Argentine peso and the US Dollar came to an end. The emergency declaration was extended for the subsequent years, being effective until December 31, 2007, as provided by Law No. 26,204 (published in the Official Gazette on December 12, 2006). Together with the termination of the above-referred one-to-one exchange rate, exchange controls were introduced in Argentina, there being -since February 11, 2002- a Single Free Exchange Market for all exchange operations.

With respect to the Single Free Exchange Market, the Central Bank of the Argentine Republic ("Central Bank") since 2002 until today has been adopting a number of measures attempting to gradually stabilize the exchange market and the commercial and financial flows of foreign currency. However, together with the above-referred measures, a strict control to the inflow/outflow of funds to/from Argentina has been introduced.

B. SCOPE OF THE SINGLE FREE EXCHANGE MARKET

The Single Free Exchange Market regulates certain transactions that are subject to strict control by the Central Bank. These regulations are focused on cross-border transactions involving the transfer of funds.

The transactions subject to control by the Central Bank are divided into two basic groups: inflow of foreign currency and outflow of foreign currency. Below, is a brief summary of the above-referred transactions.

1. Inflow of Foreign Currency

In the case of inflow of foreign currency, the transactions subject to control by the Central Bank mainly focus on: (i) payments for the export of goods, (ii) payments for the export of services; (iii) cross border loans to Argentine residents, and (iv) payment of interest in cross border loans to Argentine residents.

As a general rule, the proceeds from the transactions mentioned above must be transferred and

¹ The regulations mentioned herein briefly describe the actual applicable exchange regime and, as is provided for basic information purposes, it should be expanded and supplemented. It should also be taken into account that Argentine Central Bank regularly enacts exchange regulations amending/supplementing the existing regime.

settled in Argentina and converted into Argentine pesos. These mandatory regulations² set the settlement terms for each of the goods exported, which may range from 60 to 360 calendar days as from the date that loading is approved; and in the case of export of services, the settlement term is up to 135 business days as from its collection.

On the other hand, cross border loans to Argentine residents are subject to regulations which are aimed –as informed by the Argentine Government- to avoid mere speculative transactions. In this case, the settlement term is up to one year as from disbursement.

With certain limited exceptions (such as, for example, export advances and pre-financings for export of goods), funds from this type of transactions have to be effectively transferred into Argentina, be converted into pesos and be deposited in a local account in pesos. The same is applied to proceeds from abroad derived from private sector debt securities in foreign currency whose principal and interest services are not exclusively payable in pesos.

2. Outflow of Foreign Currency

The outflow of foreign currency mainly comprises payments: (i) for the import of goods, (ii) for the import of services, (iii) from residents of interest and dividends, (iv) of the financial debt.

Although there are no rules on minimal terms for making payments abroad, the Central Bank scrutinizes these types of transactions. In this concern, we highlight some of the transfers which are not subject to prior authorization by the Central Bank:

- (i) Payment of services rendered by non-residents (services import) under any concept (freights, insurance, royalties, technical advice, fees, etc.).
- (ii) Payment of import of goods, as long as evidence of nationalization of goods is submitted within one year of such payment.
- (iii) Payment of principal of financial debts of the financial and non-financial private sector and of public companies whose budget is not managed by the government, as long as rules on (i) minimal stay of principal, (ii) encashment (as the case may be) and (iii) report of debt status have been complied with (see “C” below).
- (iv) Payment of profits and dividends only corresponding to balance sheets closed and certified by external auditors.
- (v) Payment of interest in financial debts to creditors from abroad upon their due date or up to 15 consecutive days prior to such due date.
- (vi) Transfers under the concept of cancellation of commodities hedge/cover contract.

C. RESTRICTIONS ON THE INFLOW/OUTFLOW OF FUNDS – DECREE No. 616/2005

For years, Argentina has had no restrictions on the transfer of funds for investments into/outside the country including, *inter alia*, capital repatriations or profit remittances. As a result of the financial

² The Argentine Commerce secretary provides the term for settlement of proceeds received from transactions of export of goods.

crisis commenced on December 2001, and due to exchange control regulations imposed thereafter, Argentina placed restrictions on the transfer of funds into/outside the country, with some specifically listed exceptions.

As a result of different regulations enacted by the Central Bank, starting in 2002, the types of transfers permitted were broadened, but subject to specific procedures contemplated in regulations issued by the Argentine Government and by the Central Bank. The transfers not contemplated in such regulations are still subject to prior approval/authorization by the Central Bank.

On June 9, 2005, Decree No. 616/2005, as supplemented was issued with the purpose to strengthen controls to the inflow/outflow of funds to/from the country in order to discourage short-term speculative financial capital inflows to Argentina.

Decree No. 616/05 states that: (i) all residents (either physical persons or entities) receiving funds from abroad or sending funds abroad and (ii) all private residents who participate in indebtedness transactions with foreign entities or physical persons, that may imply future payment of funds to non-residents, shall comply with certain requisites stated below:

- (i) Registration. Shall report these transactions to the Central Bank and update debt status on a quarterly basis through sworn statements.
- (ii) Minimal stay of funds in Argentina. As to remittances of money out of the local market (repayment of loans to non-resident creditors, among others), these transactions shall not be agreed (and, thus, principal shall not be repaid) with a maturity shorter than 365 days as from the date the funds effectively entered the country, regardless of the repayment terms agreed by the parties. This provides for a minimal stay of funds in the country. This minimal-stay-rule applies to debt renewals which may not be agreed for a lesser term.
- (iii) Deposit - Settlement. The funds received shall be deposited with a bank account in the country, in Argentine pesos.
- (iv) Mandatory Deposit (*encaje*). For the funds received from abroad -advance-, a resident shall make a mandatory deposit (in Spanish "*encaje*") in a US Dollars and non -interest bearing-account in a local financial institution of 30% of the amount of such advance. This deposit shall be kept for a period of 365 days. The "*encaje*" shall be made in accordance with the applicable regulations and shall not be used as security for other credit transactions.

Decree No. 616/2005 establishes that the "encaje" for a minimum of one-year stay period will apply to all foreign inflows of funds into local currency markets, and all foreign funds destined to the acquisition of financial assets or debt from the private sector. This rule has been gradually softened with certain exemptions.

We briefly highlight some of such exemptions: (i) incoming flows related to imports and exports (foreign trade finance); (ii) foreign direct investments dedicated to productive assets; (iii) portfolio investments associated with primary public offerings of stock or bonds; (iv) funds entering the

country due to loans obtained with Multilateral and Bilateral Credit Organisms or Official Agencies; (v) Funds entering the country when they are applied -in local currency- to cancel foreign debt or acquire long term assets abroad; and (vi) funds entering the country due to debts acquired with foreigners (entities or physical persons) to pursue -in the country- direct non-financial investments and not canceled within 24 months following the time the funds were received.

II. BUSINESS ORGANIZATIONS

In order to conduct business on a permanent basis in Argentina, a foreign company shall either (i) appoint a representative or set up a branch, or (ii) incorporate a local corporate entity (i.e., a subsidiary). In contrast, to perform isolated business acts in Argentina and to participate in lawsuits, foreign corporations need not register their business. However, the above-mentioned right has been restricted by Resolution 8/2003 issued by *Inspección General de Justicia* (“Office of Corporations”), that created the “Registry of Isolated Acts” where all sales of real estate should be registered. The Office of Corporations will analyze real estate transactions involving unregistered entities and recorded as isolated acts in this registry in order to determine if they constitute “habitual acts” and therefore require to be made by registered entities.

The Argentine legal system allows the creation of different types of business entities including: (i) stock corporations (*Sociedades Anónimas - S.A.*); (ii) limited liability companies (*Sociedades de Responsabilidad Limitada - S.R.L.*); (iii) incorporated partnerships (*Sociedades en Comandita por Acciones - S.C.A.*); (iv) limited partnerships (*Sociedades en Comandita Simple - S.C.S.*); (v) general partnerships (*Sociedades Colectivas - S.C.*); and (vi) combined capital and industrial partnerships (*Sociedades de Capital e Industria - S.C.I.*).

The main types of corporate vehicles used by foreign companies in order to carry out their activities in Argentina are the (i) *Branch* and the (ii) *Subsidiary*, usually organized as a corporation or a limited liability company.

A. BRANCH OF A FOREIGN ENTITY

1. General considerations

Any company duly organized and validly existing in accordance with the laws of its country of incorporation may set up a branch or a representative office in Argentina with the purpose of engaging in business activities in Argentina on a permanent basis.

Unless provided for by special laws, there is no minimum capital requirement for a local branch. Branches must keep separate books and accounts from those of their parent company. However, since both entities are legally considered to be the same entity, changes in the capital structure of the parent as well as increases in the branch’s capital (if originally assigned) must be reported to the Office of Corporations, which is the governmental agency that supervises companies in the city of Buenos Aires. As they are not considered separate entities, the parent company is liable for all the obligations and liabilities assumed or acquired by its branch.

2. Establishment of a branch

Foreign corporations may establish a local branch by registering it before the Office of Corporations. In order to file the registration request, foreign corporations must prove their valid existence under the laws of the country in which they were incorporated; establish an address in

Argentina; comply with certain publication requirements (legal notices); justify the decision to create a local branch or representation; and appoint the person(s) to be in charge of such branch.

The registration procedure usually takes approximately 15 days.

3. Recent regulations regarding the establishment of branches and subsidiaries

Through Resolution 7/2003, the Office of Corporations introduced additional requisites for the registration of branches and foreign shareholders of local companies. As a consequence, applicants must, in addition to the requirements listed in Section 2 above comply with the following requirements: (i) provide relevant information of the applicant foreign company as to legal prohibitions or restrains to perform, in its place of origin, all or its main activities, and (ii) furnish evidence showing that, as of the date of the request for registration, outside the Argentine Republic the applicant foreign company complies with at least one of the following: (a) it has one or more branches, agencies or permanent representations outside Argentina, (b) it has equity in other companies outside Argentina which could be considered to be non-current assets of the company, or (c) it has fixed assets in its place of incorporation. Moreover, companies already operating in Argentina through a branch or participating in local companies must provide to the Office of Corporation, among other documents, a statement certified by an accountant that includes a thorough description of their assets located outside of Argentina. Failure to furnish the above-mentioned certificate within two years as from January 1, 2004 will entitle the Office of Corporations to judicially request the cancellation of the entities' registration and with regards to branches, require their liquidation.

Other Resolutions were issued by the Office of Corporations in connection with the registration of foreign companies in Argentina to conduct business either with a branch or by participating in a local company.

Resolution 2/2005 issued on February 16, 2005 prohibits the registration of offshore companies with the Office of Corporations for such purposes and establishes a special regime for foreign companies from low or zero tax territories and non-cooperative in the fight against international crime and drug trafficking jurisdictions. This Resolution is not applicable to foreign companies registered under Resolution 22/2004 as "vehicle companies". In addition to Resolution 2/2005, on March 9, 2005 the Office of Corporations issued Resolution 3/05 whereby it states that all foreign companies willing to register for the purposes set forth in this paragraph must file information identifying their shareholders or partners.

B. CORPORATIONS

1. General considerations

The law requires at least two shareholders (either corporate entities or individuals) to incorporate a SA (corporation). The Office of Corporations is currently denying registrations of documents filed by corporations whose shareholders own 99% and 1% of the capital stock, based on the fact that these companies are not complying with the requirement of plurality of partners as required by the

Argentine Companies Act, since it presumes that the holder of the 1% of the capital stock is a mere straw man that does not possess the quality of a true partner.

As a general principle, shareholders' liability is limited to the payment of the subscribed shares.

2. Incorporation

In order to incorporate a SA, the shareholders must execute a deed of incorporation before a local notary public, and subsequently submit the proposed Articles of Incorporation to the Office of Corporations for review and approval. The approval by the Office of Corporations is generally granted provided that all the above and below mentioned conditions are met.

Before the execution of the deed of incorporation, the shareholders have to reserve the corporate name with the Office of Corporations.

The incorporation and registration process before the Office of Corporations generally takes approximately ten days. Both, shareholders and directors may be jointly and severally liable for the consequences of any acts undertaken by the corporation before registration.

To become a shareholder of an Argentine corporation, foreign corporations are required to previously register their corporate documents with the Office of Corporations.

3. Capital; Purpose

There is a minimum capital requirement of \$12,000³. With Resolution 9/2004, the Office of Corporations may demand a capital amount higher than this minimum depending on the corporate purpose. This resolution states that the capital of corporations has to be fixed in relation to the corporate purpose, which has to be unique, precise and determined.

The SA 's capital is divided into shares which, by Law, must be nominative or in registered form and denominated in Pesos. Shares may be preferred or common. Common stock always has voting rights and may include a maximum of five votes per share. Shares may be divided into different classes. In general, there are no strict capitalization rules.

While the capital stock must be fully subscribed upon incorporation, only 25% (twenty five percent) must be paid-up, the balance being payable within two years. All contributions in kind (real estate, equipment or other non-monetary assets) must be made in full at the time of subscription.

4. Management

The board of directors is elected at the shareholders' meetings and manages the SA. A sole director may compose the Board, except in case of corporations subject to State control, where at least three directors are required.

³ Please note that all references to currency in this article refer to the Argentine Peso.

The directors of the SA, including the President, may be foreigners; however, the majority of members of the board must be Argentine residents (even though they may be foreign nationals). With a new resolution issued by the Office of Corporations, all principal members of the Board of Directors must provide a guarantee of \$ 10,000.

Board meetings must take place at least once every quarter. The quorum to hold a board meeting is at least half plus one of its members. The corporation's by-laws should establish the quorum necessary to approve decisions in every case. The directors must be physically present in order for the meeting to be valid; consequently, conference-call meetings are not permitted in relation to Argentine corporations, but video conference calls are permitted.

Legal representation of the company lies, in first place, with the President of the board of directors. The President does not have a casting vote in case of a tie, unless otherwise established in the corporate by-laws.

5. Meetings of Shareholders

There are two types of shareholders meetings depending on the nature of the matters to be discussed: ordinary and extraordinary.

Ordinary meetings deal with the approval of the annual balance sheet, the appointment of directors and syndics or comptrollers ("*síndicos*") as well as their eventual liability *vis-à-vis* the corporation, and capital increases up to five times the original corporate capital.

Extraordinary meetings, in turn, may deal with the amendment of the corporate by-laws (e.g. change of the corporate purpose), capital reductions, mergers, limits or suspension of the shareholders' preemptive rights to subscribe new shares, and the issuance of bonds and debentures, among other decisions.

An ordinary meeting must be convened within four months after the closing of each fiscal year.

Both types of meetings require special notice (publication in the Official Gazette -and in a major newspaper in case of corporations subject to State control- including the agenda to be discussed) except in the case of unanimous meetings, for which no notices are required. Shareholders holding 100% of the capital and votes are present at a meeting, they are allowed to discuss matters not included in the agenda.

On first call, ordinary meetings require a quorum of 51% of the voting stock, and extraordinary meetings require a minimum of 60 %, unless a higher percentage of voting stock is required by the corporation's by-laws. On second call, ordinary meetings may be held regardless of the number of votes present; extraordinary meetings require the presence of 30% of the voting stock, unless otherwise specified in the by-laws.

In all cases, an absolute majority (51%) of the voting stock is necessary to approve any decision, unless a higher percentage is required by the corporation's by-laws.

Directors cannot represent shareholders at any meeting.

6. Syndics

Syndics are officers appointed by the corporation, who act on behalf of the shareholders for the purpose of controlling the legality of the corporate activities as well as the performance of the duties required by all corporate governing bodies.

The appointment of syndics is mandatory for corporations subject to State control. On the other hand, the appointment of syndics is optional for other corporations. Shareholders may appoint one or more syndics; otherwise, they must elect alternate directors.

Syndics must be Argentine residents, either lawyers or public accountants, and are generally the company's auditors. They may participate in board meetings, but cannot vote. They also have to submit an annual report to the shareholders' meeting on the state of the corporation, and provide information to the shareholders upon request made by shareholders representing at least 2% of the total stock of the company. They are also authorized to convene shareholders' meetings whenever they deem it necessary or if the board fails to do so.

Syndics, members of the auditing counsel and auditors are liable in the same manner as the members of the Board of Directors of a corporation.

7. Governmental monitoring

Corporations are subject to governmental monitoring when (i) their stock is publicly traded, (ii) they have capital stock in excess of \$ 2,100,000, (iii) they exploit public concessions, (iv) they render public services, or (v) they provide financial services to the public.

Such companies undergo a more strict scrutiny by the Office of Corporations and, according to their specific status or business, also by the Securities and Exchange Commission (*Comisión Nacional de Valores*), or the Central Bank, and must therefore regularly file documentation regarding corporate activities with such entities.

C. LIMITED LIABILITY COMPANY (LLC)

1. General considerations

A Limited Liability Company (in Spanish, *Sociedad de Responsabilidad Limitada* or *SRL*) may have a minimum of two and a maximum of fifty partners who may be individuals as well as corporate entities. The same restriction as to the partners holding 99% and 1% of the capital stock of corporations apply for LLCs (see II. B. 1.)

2. Incorporation

The procedure for the incorporation of a SRL, is a similar to the one for corporations.

3. Capital

The capital of a SRL must be fully subscribed, denominated in Pesos and divided into interests called “quotas”. Partnership quotas must be of equal value (10 Pesos or multiples thereof) and entitle the holder to one vote each. The transfer of quotas between partners is not restricted by law, but may be restricted under the partnership’s by-laws.

4. Management

The partners must appoint one or more managers to represent and manage the SRL. Such managers have similar rights and duties as the directors of a corporation and must also provide for a \$ 10,000 guarantee, amount that is limited to \$ 2,000 if the capital amount of the SRL does not exceed from \$12,000.

D. REGULATED ACTIVITIES

Some activities are regulated in Argentina by specific laws:

- (i) **Financial Institutions:** The Financial Institutions Act No. 21,526/77 governs commercial and investment banks, credit associations, mortgage banks, as well as finance, savings and loan companies. The Central Bank regulates and supervises local financial institutions. It has authority to approve mergers & acquisitions and transfers of shares of financial institutions, as well as the establishment of foreign banks. The Central Bank is also responsible for setting rules as to permitted activities, limit of credit, minimum capital, level of indebtedness, reserves and risk, all based on the Basle Committee guidelines.
- (ii) **Insurance Companies:** The Insurance Law No. 20,091 governs insurance and reinsurance activities. The National Insurance Supervision Agency authorizes and controls the incorporation of insurance companies and the transfer of shares.
- (iii) **Capital Markets:** The Securities Law N ° 17,811/68 regulates Argentine capital markets. Public offers of securities require authorization of the Argentine Securities and Exchange Commission. The main Stock Exchange in Argentina is the Buenos Aires Stock Exchange, which trades securities, equity certificates, options and futures. Foreign companies may offer their securities in Argentina as long as they fulfill the same requirements as those required from domestic issuers. Alternatively, foreign companies may issue Depositary Receipts to offer in the Argentine capital markets.

- (iv) Pension Funds: The social security and pension funds system is divided into two categories: (i) the mandatory public system, whereby employer and employee pay monthly contributions to the public pensions management fund, which administers and repays pensions, or else employees may choose to have such funds administered by certain private management funds (*Administradoras de Fondos de Jubilaciones y Pensiones – AFJP*), authorized by the Government and governed by Law No. 24,241/94, and (ii) the private system, optional and complementary to the mandatory public system, whereby employees pay contributions to a private management fund, which administers and repays pensions. There are no restrictions to the operation of private management funds by foreign entities, as long as they fulfill certain requisites and are authorized to operate in Argentina.

III. INTERNATIONAL TRADE

Argentina incorporated the final minutes of the World Trade Organization (WTO) Uruguay Round in 1994 and, as such, incorporated the Agreements on Antidumping, Countervailing Duties and Safeguard Measures, which were enacted in Argentina by means of Law 24,425 and regulated through Decree-Law 1326/98.

A. DUMPING

A dumping practice exists whenever the export price of any good is lower than the comparable normal sale price in normal commercial transactions for identical or similar products destined for consumption in the domestic market of the country of origin.

Antidumping measures can only be applied in case that damage or a threat of damage to the domestic industry has occurred as a result of the imported products and there exists a direct relationship between the injury and the dumped product. In order to request the initiation of an antidumping investigation, national producers must provide objective material evidence of the existence of any of the following situations: (i) damage to the national production, (ii) threat of relevant damage to national production, or (iii) sensitive delay in the creation of a national production.

The antidumping process is conducted, in its various stages, by the National Foreign Trade Commission (CNCE), the Under-Secretariat of Foreign Trade (SSCE) and the Secretariat of Industry, Commerce and Mining (SICM). The final decision whether to apply an antidumping measure is taken by the Ministry of Economy and Production (MEYP).

An antidumping investigation generally takes around a year to be completed. Antidumping duties may be established for a maximum period of five years, with annual revisions. Those measures can be retroactively applied to the period when preventive sanctions were taken.

If Antidumping duties are established, those duties may not exceed the dumping margin determined during the process.

B. SAFEGUARD MEASURES

Safeguard measures consist of a protection for a period during which a national industry may seek more competitiveness in international markets through a readjustment process. Safeguard measures are applied to all imports of the concerned product. In order to adopt safeguard measures, it is necessary to conduct investigations to determine that (i) imports of the product under investigation have increased, (ii) there is an actual or threatened material damage to the sector under investigation, (iii) the increase of imports of the investigated product is the cause of the actual or threatened material damage.

The process is conducted, in its various stages, by the Secretariat of Industry, Commerce and PyME (SICyPyME), the SSCE and the CNCE. The final decision whether to apply safeguard measures is taken by the Ministry of Economy.

IV. PRINCIPLES OF TAXATION IN ARGENTINA

In Argentina, taxes are levied at three different jurisdictional levels: Federal, Provincial and Municipal.

A. FEDERAL TAXES

1. Income Tax

- (i) Residents: Residents in Argentina must pay this tax based on their net income obtained from Argentine and foreign sources (Worldwide Income Tax).
 - a) Individuals: National and foreign individuals residing in Argentina for more than six months per calendar year are subject to income tax, which is calculated upon the net annual taxable income stated in their annual tax return, filed with the tax authority. The applicable rate ranges between 9% and 35%, depending on the annual net income.
 - b) Legal entities: Companies are subject to a 35% tax on their annual net income. Remittances of profits to the foreign head office and remittances of dividends to the foreign shareholders are not subject to any additional income tax.

Income tax must be accounted for on an annual basis.

- (ii) Permanent establishments: Branches and other permanent establishments of foreign companies will be subject to income tax on their income from Argentine and foreign sources. The tax rate is 35%.
- (iii) Non-residents: Non-residents -either individuals or companies- are only taxed on income obtained from an Argentine source. According to the kind of income obtained by the foreign beneficiary, the effective rate shall range between the 3.5% and 35% over the gross amount.
- (iv) Transparency rules: Argentine shareholders must declare the proportion that they enjoy in the underlying income of the foreign company, and be subject to tax thereon, independently from whether any distribution of dividends takes place or not.
- (v) Transfer Pricing: Transactions between related parties (the term “related parties” is very wide in scope) shall be considered executed on an arm’s length basis only when its terms and conditions conform to the normal practices of the market. The lack of such circumstances compels the local resident to adjust the terms and conditions according to the methods stated by the Income Tax Law.

Argentina is a party to a wide range of international treaties to avoid double taxation. In general, the wording of the international treaties adopted by Argentina follows the model of the Organization for Economic Co-operation and Development (OECD).

2. Value Added Tax (VAT)

This tax applies to the value added by a company or individual to the goods it produces or imports, to the services it renders or imports and the contracts for assignment of rights it enters into, provided these assignments are complemented with the rendering of services or the sale of personal property and constitute an authorization for exploitation; otherwise, the assignments of rights shall not be subject to the tax in question. This is achieved by allowing the compensation of tax credits incurred by payments made to suppliers against gross tax liability (input tax credit). Currently, the general VAT rate is 21%, although there are differential rates of 10.5% and 27%; depending on the product sold or the service rendered.

Exports are exempted from VAT. Tax authorities refund the tax credit obtained by exporters as a consequence of the purchase of goods and the hiring of services necessary and related to the products or services exported.

3. Tax on specific consumption

The purpose of the tax for specific consumption is to levy a tax on the consumption of certain goods or services within the country (tobacco, champagne, alcoholic beverages, beer, insurance, cellular phone and satellite communications, etc.)

It is a one-time payment tax, non-cumulative and complementary to the VAT.

The applicable rate shall depend on each product or service subject to taxation.

4. Tax on Personal Assets

This tax applies to real estate and personal property owned by natural or physical persons and undivided decedents' estates as of December 31 of each year.

Individuals and estates domiciled in Argentina must value and assess the tax in respect of the property they own within the country and abroad.

Natural persons or estates not considered to be residing within the country are subject to this tax only in respect to their personal property located in Argentina.

Property is valued pursuant to the provisions of the law and the applicable rate is 0.5% and 0.75%. When the valuation of the property does not exceed \$200,000, the applicable rate is 0.5%; otherwise, i.e. if it exceeds said amount, the applicable rate is 0.75%. This difference applies only to Argentine residents, since non-residents shall be subject to the rate of 0.75% on the property held in the country.

As an exception to the rule, a 1.5% rate is applied in cases where the owner of certain property located in Argentina is a company or other kind of entity, enterprise, establishment, assessed property or exploitation, domiciled or, as the case may be, located or situated in a foreign country, in countries that do not apply legal regimes for private securities.

Residents may also deduct from their taxable base \$102,300 as “non-taxable minimum”.

Said benefit also applies to foreigners who enter the country for employment purposes, up to five years, as well as to members of foreign diplomatic missions who are not exempt due to lack of reciprocity.

The equity interests and shareholdings in Argentine companies held by individuals and undivided decedent's estates located abroad are subject to this tax at a rate of 0.5% on the Proportional Equity Value of their shares. This tax has to be paid by the Argentine companies and payment thereof shall be construed as the sole and final payment of this tax. For taxation purposes only, the Argentine Law presumes *iuris et de iure* that those equity interests and shareholdings in Argentine companies whose holders are companies (or any other kind of legal entity, enterprise, permanent establishment, assessed property, exploitation) domiciled, located, or situated in a foreign country, indirectly belong to individuals or undivided successions domiciled or located in a foreign country. The payment of this tax could be avoided when Argentine companies are controlled by foreign entities located in certain countries with which Argentina has signed international treaties to avoid double taxation (e.g. Spain, Chile, Italy, Switzerland).

5. Tax over Minimum Presumed Income

This tax applies to companies residing or having permanent a establishment in Argentina, single-member companies or enterprises, individuals and some estates of deceased persons, owners of rural properties, trustees and common investment funds.

This tax is calculated applying the of 1% over the value of assets, valued pursuant to the law applicable to the tax in question

As to this tax, due to its being complementary to the income tax, taxpayers may compute payment of their income tax on account of this tax.

6. Tax on Financial taxation

This tax was created by the Competitiveness Law (25,413). This tax is applied to any and all credits or debits to checking accounts (although the Law provides for several exemptions). This tax amounts to 0.6% over the amount of the relevant credits or debits.

7. Tax on the transfer of real property from individuals and undivided decedents' estates

This tax applies to the transfer, for value, of ownership in real property located in Argentina.

The subjects of this tax may be individuals or undivided decedent's estates.

The tax is applied on the value of the transfer using a rate of 1.5%.

B. LOCAL TAXES (PROVINCIAL AND MUNICIPAL)

Argentina is divided into provinces, which, in turn, are divided into municipalities. Both provinces and municipalities collect their own taxes. The main taxes collected by the provinces are: Gross Turnover Tax, Stamp Tax, and the Real Estate Tax; and by the municipalities are: Inspection, Safety and Hygiene Tax and Advertising Rights.

1. Turnover Tax

It is an all-stage turnover tax imposed on gross income from most business activities. If activities are carried out in more than one jurisdiction, gross income is allocated or apportioned among the jurisdictions concerned, pursuant to the rules of the "Convenio Multilateral", which is a treaty executed among the provinces and the city of Buenos Aires.

The tax rate varies according to the jurisdiction. The standard rate in the city of Buenos Aires is 3%, but there are special rates, which vary depending on the type of activity taxed.

2. Stamp Tax

It is applied on certain contracts, written contracts and monetary operations executed or having effects in Argentina. Documents and written agreements are taxable with their sole existence, even if the document or contract in question is of no validity or effect or the transaction referred thereto is never completed.

As a local tax, each jurisdiction establishes its own tax rates. In turn, different tax rates are applied within each jurisdiction, according to the type of transaction included in the taxable document.

The city of Buenos Aires only applies this tax to commercial leases and subleases of real state, transfers of Ownership over real property or the granting of possession of real estate located in the City of Buenos Aires as well as the transfer of ownership in ships – provided they are not for commercial use, yachts, vessels, airplanes and/or similar.

3. Real Estate Property Tax

This kind of tax is applied to ownership of real estate in Argentina. The tax rate and procedures for the determination of the assessable values vary according to the jurisdiction in which the real estate property is located.

4. Inspection, Safety and Hygiene Tax

Although the name of this tax differs in each municipality, in principle, in every municipality it applies to any commercial or industrial activity, or to the rendering of services or for value, and to every act aimed at promoting, encouraging, diffusing or exhibiting in any manner a product or service. Said tax is levied for the purpose of handling certain hygiene, local inspection, social assistance services and others, rendered in the municipality.

The taxable basis, in most municipalities, is determined according to the gross income of the taxpayer. The applicable rate depends on the activity performed by the taxpayer and the jurisdiction; in general, rates range between 0.2% and 1.2% of the gross income, and in some jurisdictions, small-scale taxpayers pay a fixed amount per month.

It is worth mentioning that this tax has brought several conflicts between municipal tax agents and taxpayers, based on the inconsistency of the service rendered by the municipality and the amount claimed for the rendering thereof, as well as the methods for liquidation of the tax applied by some municipalities.

5. Advertising Right

This tax applies on publicity performed through advertisement in the street, or viewed from the street, or in public-access places.

In the different jurisdictions, fixed amounts are paid according to several parameters related to the size of the advertisement, the technology and the location thereof.

C. CUSTOMS RIGHTS

1. Mercosur

As from the entry into force of the Treaty of Asuncion (*Tratado de Asunción*), the Republic of Argentina has been undergoing a process of regional integration called MERCOSUR.

Said treaty provides, among others, that the goods originated in any of the member countries shall be subject to 0% of tax as import rights (although there are some exceptions).

Within the MERCOSUR, an external common duty has been established for goods coming from non-member countries.

Currently, Argentine courts are discussing whether the Government may establish export duties on goods to be exported to MERCOSUR members.

2. Main taxes applied to imports and exports of goods

Our Customs Code defines as goods any object capable of being imported or exported, and assimilates to goods certain other elements such as (i) copyrights intellectual property rights and (iii) the hiring and rendering of services abroad the effective use or exploitation of which is conducted within the country, excluding any service not rendered under commercial conditions, or in concurrence with one or more service providers.

(i) Import Tax

This tax applies to import for consumption. Import for consumption is the situation where the goods are introduced into the customs territory for an indefinite period of time. The rate applicable to the imported goods shall depend on their country of origin, the country from which the goods are imported and the features of the goods.

(ii) Export Tax

This tax applies over the export of goods for consumption. The rate applicable shall depend on the kind of goods, and the country of destination.

(iii) Statistical rate

In final or suspensive imports and exports where a statistical service is rendered, this latter is taxed with an *ad valorem* rate as provided for by the applicable law.

(iv) Storage fee

Currently, the storage of goods is outsourced (outsourcing) to private companies who charge a price set by the Executive Power for each day the goods remain on deposit.

V. MERGERS AND ACQUISITIONS

A. INTRODUCTION

Argentine law provides for two kinds of mergers:

- when two or more companies incorporate a new one, being consequently dissolved.
- when a company takes over one or more companies that are consequently dissolved.

With regards to spin-offs, Argentine law sets forth the following types:

- when a company allocates part of its assets to merge with other existing companies (subject to mergers' procedure), or participate with such existing companies in the incorporation of a new company.
- when a company allocates part of its assets to incorporate one or more companies.
- when a company is dissolved in order to create new companies with all of its assets.

When deciding to start a merger or an acquisition transaction, buyer and seller need to consider some preliminary conditions before drafting any agreements. Purchase terms along with a due diligence investigation are primary concerns in view of the significant transaction's costs in which the parties are generally involved.

As a starting point, the Parties need to clearly envisage the purpose of the transaction and the best way to engage in the negotiation in order to achieve such purpose. The buyer needs to identify issues that will help him decide whether the acquisition should be undertaken by the purchase of a company or through the purchase of business assets, while the seller needs to evaluate the transaction's effects on its economic situation. A "Letter of Intent" will most likely be executed at this point. This document will be subject to the same rules applicable to other types of contracts. Therefore, the terms agreed by the parties will, in principle, govern the effects and consequences derived therefrom.

Since negotiations for the purchase of shares or assets often require a great deal of time, preliminary agreements on specific issues and topics are frequently concluded. This will most probably lead buyer and seller to exchange memorandums of understanding that outline the business objectives of the transaction and general principles that will be the subject of further, more detailed negotiations and documentation.

The violation of the terms of the memorandum of understanding and the termination of negotiations in bad faith or without a valid reason may give rise to a claim for damages.

The legal due diligence is another very important part of the merger and acquisition process. This process of investigation is conducted for the purpose of ascertaining the company's main liabilities as well as the legal status of its assets and rights. It is discussed in further detail below.

Both the memorandum of understanding and the due diligence process are crucial to the buyer. A decision to complete the transaction should only be made once a proper assessment of the target and its business has been achieved.

The buyer needs to know that it is protected against any possible future claim in relation to the acquisition transaction. This is the reason why it is necessary to identify any legal issues associated with the acquisition process and any major impediments to the successful conclusion of the transaction.

B. TRANSFER OF AN ONGOING CONCERN

This type of transaction is regulated by Law 11,867, that sets forth a procedure for the sale and purchase of what, under Argentine law, is considered to be a “universality” of patrimonial rights. The transfer of an ongoing concern implies the transfer of all the main components of a business, which includes: trademarks, brand names, logos used by the target company in connection with its products or services, patents, industrial designs, and all rights emerging from industrial or commercial property, clientele, existing goods, etc. All purchases of real estate must be implemented through the execution of a public deed and must be registered with the Real Estate Registry in order to exclude third party claims against the transferred assets. Intellectual property can be transferred by assignment, but if it is subject to registration, then the transfer has to be notified to the relevant IP registry, to protect the buyer from any claims.

Once there is a preliminary agreement between the seller and the purchaser with respect to the transfer of the ongoing concern, the seller has to deliver the buyer a document in which all the debts arising from the ongoing concern that he intends to sell are detailed, and containing information on creditors and credits. An auctioneer or a notary public may intervene in the transaction if necessary. The extent of the seller’s guarantees and indemnities will depend on the size of the transaction and the type of assets involved. Hidden liabilities will make the seller liable within the extent of his knowledge and conduct in relation to such liabilities.

The transfer of an ongoing concern commences with publications in the Official Gazette of all the characteristics of the transaction together with the seller’s and buyer’s names and addresses. The main purpose of these publications is to permit objecting creditors to learn about the planned transfer. Creditors have a period of time to object to the transfer until they collect their credits or receive satisfactory payment guarantees.

In the absence of any agreement with objecting creditors, the amount of money for the payment of their debts will be retained for a period of twenty days. During this period creditors can obtain judicial attachments over the retained money.

If no opposition is filed by creditors within ten days from the last publication or, if filed, they are duly handled according to the law by retaining the corresponding amount of funds, the transfer is completed with the execution of the final purchase agreement and, from that time onwards, the buyer will no longer be liable for debts associated with the ongoing concern, originated prior to the

acquisition, with certain exceptions (like certain labor obligations and determined tax obligations of the seller). Furthermore, the final agreement has to be signed and registered with the Office of Corporations.

We note that it is also necessary to notify the Federal Administration of Public Revenue (AFIP) so that the buyer's liability to-undetermined fiscal debts may be terminated.

In that sense, the AFIP should be notified 15 administrative days in advance to the registration of the final contract with the Office of Corporations.

After 3 months from the registration of the final contract, if the AFIP has not filed a procedure for determination of undetermined fiscal debts, the AFIP's entitlement to require the buyer payment of the undetermined fiscal debts shall be extinguished.

The proceeding described herein, or similar ones, must be followed in all the jurisdictions where the ongoing concern has conducted activities.

C. TRANSFER OF SHARES

Regarding this type of transaction, at a preliminary stage, the buyer should review in detail the by-laws of the target company in order to find out if there are any restrictions to the assignment or transfer of shares. The buyer should also evaluate the type of shares that it will acquire, and the rights associated with it. Recent money-laundering regulations make mandatory for some private companies, entities and professionals to report to the National Authority any transaction over \$50,000 (USD 17,000) where offshore entities or individuals residents in offshore jurisdictions are involved, since these operations are presumed suspicious. Therefore, the buyer should carefully consider the vehicle to be used in the purchase.

A purchase of shares will result in the purchasing of a company and thus in inheriting all the liabilities of the acquired company. This implies a high risk for the buyer, and that is why it necessarily demands the performance of a due diligence analysis. In all acquisitions of shares it is advisable for the buyer to retain part of the sale price in escrow, for a certain period of time, in order to be covered from any undisclosed liability. At any time, additional guarantees may be agreed upon with the seller.

There are certain regulations that foreign corporations must comply with before the purchase of shares of local companies. In this respect, please see II A, herein.

D. DUE DILIGENCE

When starting negotiations for the acquisition of assets or shares, the buyer, to ensure an effective transaction, must diligently and carefully examine all aspects of the target and its business activities. Specifically, buyer should try to identify eventual contingencies in order to better assess the value

of the business being acquired and the possible consequences of getting further involved in the transaction. The decision to acquire the target company, and the assessment of the appropriate price to pay, will be based on a clear and full view of the target.

The buyer needs to be sure, in the case of assets acquisition, that it will have the ability to carry on business after the acquisition and to achieve confidence of its ability to manage and control the target within its own group.

The terms and conditions for the undertaking of the due diligence are generally agreed-upon by the parties (buyer and seller) in a written document, generally the preliminary agreement we referred-to in V A herein. In such way, projective and avoided.

The due diligence process identifies and quantifies risks. It confirms if the target company has good title to its material assets and determines the existence of intangible rights or assets. It also shows the existence of all necessary licenses, confirms if the target is in compliance with applicable law, identifies present and possible future claims and disputes, reveals unusual contract terms and existing contracts, and analyzes the effect of the transfer on the business activities performed by the buyer.

The outcome of this scheduled and intrusive investigation protects the buyer by allowing it to obtain full information and giving it a chance to abandon the transaction if the disclosed matters are unacceptable according to its criteria. Due diligence also gives the seller the chance to apportion risks and liabilities.

An important risk the seller might incur during the due diligence is disclosing confidential information to a potential competitor without being ensured as to the completion of the transaction, which would weaken seller's bargaining position by exposing problems in the company being sold. That is because it is very frequent that confidentiality agreements are executed, together or within the agreement we referred-to in VII A herein.

Due to information asymmetries, due diligence is more important in international acquisitions than in domestic transactions, where both parties have a relatively good understanding of the legal aspects involved and more information about the counter-party.

Due diligence as a process of identifying and measuring risks should include:

- Environmental audit.
- Corporate audit.
- Financial activities and taxation audit.
- Labor and employment audit.
- Contracts audit.
- Real property audit.
- Trademarks and other industrial property rights audit.
- Litigation audit.

E. ANTITRUST ISSUES (see Chapter VIII)

VI. EMPLOYMENT ISSUES IN ARGENTINA

A. INTRODUCTION

Employment relationships in Argentina are generally governed by Labor Contract Law No. 20,744 as amended ("Labor Law"), collective bargaining agreements and the individual terms of labor contracts entered into between employers and employees.

Collective bargaining agreements should be approved by the Ministry of Labor. Once approved, they become binding not only for the members of the unions and employers' associations that executed them, but also for all employees and employers involved in the same activity or industry.

Pursuant to the Law No. 20,744, employees are entitled to all the benefits set forth in the Argentine labor laws, which are considered "public order laws". Hence, their provisions may not be altered by any private agreement between employers and employees, unless such changes leave the employee better off. Therefore, any clause in an employment agreement that results in a disadvantage for the employee in light of the labor laws will be deemed void and unenforceable.

B. CHARACTERISTICS OF AN EMPLOYMENT AGREEMENT

Employment agreements are considered to be for an indefinite term, unless otherwise expressly agreed in writing between employer and employee.

All employment contracts entered into for an indefinite term have an initial test period of three months. During the test period, both the employer and the employee may terminate their relationship for any cause, and no severance compensation has to be paid for such termination. The employer should serve prior notice to the employee about the termination of the employment agreement within 15 days prior to the expiration there of.

Working hours should be 8 per day or 48 per week. Overtime is limited to maximum hours per month and per year.

1. Salary and benefits

Salaries may be paid on a monthly, daily or hourly basis, depending on the type of work performed by the employee. There is a mandatory monthly minimum wage that is periodically revised by the Ministry of Labor.

Employees must be paid an extra salary per year equivalent to a month's salary (or less depending on the time effectively worked), locally known as *aguinaldo*, which is payable every calendar year half in June and half in December. All payroll employees, regardless of their rank, enjoy this statutory right.

According to judicial precedents, “bonuses” are considered part of the salary paid by the employer on a spontaneous and discretionary basis as a prize for services rendered by the employee and granted beyond the original agreement of the parties as to the employee's normal and regular wages. In addition, bonuses paid on a regular basis entitle employees, in principle, to claim payment thereof in successive periods, and therefore allow employees to seek the enforcement of payment obligation in court.

2. Vacations and leaves of absence

Employees are entitled to annual paid holidays, which vary from 14 to 35 days per year depending on the employee’s seniority.

Employees are also entitled to short leaves of absence in the event of marriage, childbirth, death of a close relative and high-school or university exams. Female employees enjoy certain additional rights, the most important of which is the special maternity leave consisting of 45 days before and 45 days after birth.

In the event of inability to work due to illness or non-work related accidents, employees are entitled to their full salaries for a period that varies from 3 to 12 months, depending on the length of service and the existence of family dependents.

3. Termination

Labor law establishes a compensation system for termination of employment agreements by the employer without cause. In order to calculate such compensation, the following concepts must be taken into account:

- (i) Seniority of the employee and the cap system to severance payments.
- (ii) Calculation of severance taking into account the best, frequent and ordinary salary received by the employee during the last year of employment, or during the term of the working period, if less than one year.
- (iii) Prior notice of termination of the employment agreement.
- (iv) Payment of the full month’s salary prior to termination.
- (v) Proportional annual *aguinaldo*.
- (vi) Proportional vacations.

If a foreign employee is hired to render services in Argentina, the employer must usually bear the expenses related thereto. If the employment agreement is terminated, there is no legal provision stating that the employer has to pay the employees’ transportation expenses and the employee would have to pay the return trip at his own expense. If this were the case, it is highly likely that the employer would be made to pay in court the extraordinary expenses incurred by the employee.

C. SOCIAL SECURITY CONTRIBUTIONS AND INSURANCE

Employers must register themselves and their employees under the Unified System for Labor Registration ("USLR"). Employers must withhold social security fees and pay contributions to the USLR, which are deducted from the salaries paid. The USLR manages: (i) the retirement pension fund, (ii) the family allowances fund, (iii) the social security fund, and (iv) the unemployment fund.

Payment of social security contributions may be avoided if certain conditions are met such as, for example: foreign employees with period of assignment in Argentina of two years or less, or foreign employees not having a permanent residence in Argentina.

Argentine law established a system to reduce working risks and to indemnify injured workers from labor injuries. The provisions of the Labor Risks Law No. 24,557 protect, in principle, all workers employed in the private sector. Employers of workers included within the scope of this law must self-insure against the obligations imposed by the law or contract labor risk insurance with a labor risk insurance company. These companies, locally known as "ARTs", provide coverage to workers in accordance with the requirements of the Law 24.557, including medical and pharmaceutical care, orthopedics prostheses, rehabilitation, occupational re-classification and funeral service fees. ART companies are financed through a monthly payment made by the insured employer.

Employers are also required to contract life insurance policies for their employees.

D. IMMIGRATION ISSUES

1. General Considerations

The National Direction of Migrations is the entity in charge of the admission of individuals in Argentina. It grants admission under three different categories:

- (i) **Permanent:** For foreign individuals willing to permanently reside in Argentina.
- (ii) **Temporary:** For foreign individuals who do reside on a permanent basis in the country, but will perform commercial, industrial, scientific, educational, labor, artistic, religious, cultural or sports related activities; students; and workers hired by individuals or companies established in Argentina, according to Argentine labor law regulations.
- (iii) **Transitory:** For individuals in transit, tourists; individuals entering Argentina for medical treatment purposes; crewmembers of international carriers; persons willing to carry on business, investments or to perform analysis of the market; and persons willing to perform cultural, artistic or religious activities in the period for which the transitory residence is granted.

2. Business Visa

Foreign individuals entering Argentina for the purpose of conducting business are granted a 90-day admission period, and there is no limit on the number of trips per year that a person is allowed to

make. If an individual is planning to work in Argentina on a permanent basis, a work permit should be requested.

VII. INTELLECTUAL PROPERTY

A. INTRODUCTION

Protection of intellectual property is based on Art. 17 of the Argentina Constitution, which provides: “all authors or inventors are the exclusive owners of their works, inventions or discoveries for the time period established by the law.”

Argentina has adhered to the GATT-TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights Agreement), as of January, 1995.

Intellectual Property and the rights concerning it are divided in two major areas in Argentina:

Industrial Property Rights, arising from use and exploitation of:

- (i) patents,
- (ii) trademarks,
- (iii) trade names,
- (iv) industrial models and designs,
- (v) utility models, and
- (vi) confidential information; and

(ii) Intellectual Property Rights, arising from the use and exploitation of copyrighted works and author’s rights.

B. INDUSTRIAL PROPERTY RIGHTS

1. Patents

Argentine patent regulations are basically contained in the Patents Law No. 24,481, as amended by law 24.572 and it’s Regulatory Decree No. 260/96. Argentina is also a party to the Paris Convention as of 1966. In accordance with the Argentine patent regime, a patent is the certificate granted by the State in favor of the inventor granting an exclusive temporary exploitation right on its invention.

Argentine Patent Law states that any invention of a product or process is patentable, provided that it is new, involves an inventive activity and is capable of industrial application. The invented product or process must be new with respect to any other product or process previously invented. Disclosure of an invention by any means of communication or display at a local or international exhibition within one year prior to the patent application date or of its recognized priority, shall not impair its novelty.

Patents are granted for 20 years as from the application date and after expiration of such term, patent rights fall into the public domain.

The patents obtained within a labor relationship are subject to specific regulations. In case that the employee-inventor is subject to a labor relationship whose final purpose is to achieve patentable inventions, the employer is entitled to the patent rights and the employee will have the right to an additional compensation only if he has made a personal contribution to the invention so important that it considerably exceeds the bindings of the labor relationship. If the employee-inventor is subject to a standard labor relationship, the employer shall have an option to claim ownership over the invention or its exploitation.

Any person may apply for a compulsory license to the Patent Office of the applicant or patentee has not exploited his invention following four years from the application date, three years from the date of issuance of the patent, or if exploitation of the patent has been interrupted for more than one year.

Any of the patents rights may be freely transferred by means of: (a) a transfer/assignment agreement, in case of transfer of the patent's ownership or (b) a license agreement in case of the exploitation rights. Registration of the referred agreements is required in order to be effective vis-à-vis third parties.

2. Trademarks

Argentine trademarks and trade names are governed by Trademarks Law No. 22.362 and its regulatory Decree No. 558/81, as well as the TRIPS Agreement and the Paris Convention. Argentina has adopted the International Classification of Goods and Services established by the Nice Convention. As from April 1st 2002, filing in new classes 43, 44 and 45, is possible.

A legitimate interest is required to be the owner of a trademark. No previous use is required to file an application. Rights are granted on a first to file basis. There are no multiple class trademark registrations and, therefore, a separate application must be filed and prosecuted for each class of interest.

Any sign with a distinctive capacity may constitute a trademark, among others: words, drawings, monograms, engravings, designs, seals, images, color combinations, packaging of products, combinations of letters and numbers, advertising phrases, etc. Even sounds may be registered, provided that sufficient graphic representation for publication purposes is provided.

Registration of the following is prohibited: (i) identical or similar trademarks to others already registered; (ii) appellations of origin; (iii) trademarks that may lead consumers to confusion with respect to the product or service characteristics; (iv) signs against morality or public order; (v) national or foreign official signs; and (vi) names, pseudonyms or portraits of a person, without his consent.

Ownership of a trademark and the right to its exclusive use are obtained through registration before the National Institute of Industrial Property. Registration enables to file precautionary actions, such as seizure of infringing goods, injunctions and infringement actions. Owners of unregistered marks may seek defensive actions through unfair competition under common law and the TRIPS Agreement.

Trademarks are registered for a period of ten years and may be renewed indefinitely for identical successive periods, provided that the mark has been used. If a trademark is not used in the marketing of a product or service during a five-year period, it is subject to cancellation at the request of any interested party. The cancellation must be judicially declared and does not have automatic effects.

Assignment of registered trademarks and pending applications is possible. For the assignment to be valid with respect to third parties it must be recorded at the Trademark Office.

3. Trade names

A trade name or commercial name is the name identifying a profitable or non-profitable activity in the marketplace. No registration is required. Ownership is acquired by an ostensible, pacific and public use of such name during one year. The right to a trade name ceases when the activity identified under such name is discontinued. The geographical scope of use of a trade name is determined by the area in which the activity is conducted.

Owners of trade names are granted both civil and criminal actions in order to protect their rights against trade name forgery, imitation or any other kind of unauthorized use.

4. Industrial Models or Designs

An industrial model or design is the ornamental shape or appearance incorporated to an industrial product, either bidimensional or tridimensional. Deposit before the Registry of Models and Industrial Designs is mandatory. Absolute novelty is required. Applications claiming priority according to the Paris Convention –that is filed within six months of the filing date abroad- are exempted.

Decree No. 6673/63 grants protection of an industrial model or design for a five-year term, renewable for two identical additional periods, subject to payment of renewal fees.

5. Utility Models

A utility model is any new shape or arrangement included in a product which results in the improvement of it's practical function. The right to a utility model is granted through registration with the Patents Office, for a non-renewable ten-year term from the filing date.

6. Trade Secrets

In Argentina, trade secrets are protected as confidential information as from enactment of the TRIPS Agreement. Later, the Confidential Information Law No. 24.765, was passed on December 18, 1996.

In accordance with the provisions contained in Argentine law, confidential information is any secret information with commercial value due to its secrecy and related to products and/or procedures. It is generally unknown or not easily accessible in those circles in which the information is normally used and on which reasonable measures to preserve the secrecy were adopted by the person or organization that owns the confidential information.

Any individual or entity under the control of Confidential Information is authorized to impede its disclosure or its use.

Any individual who, as a consequence of his/her position, profession, labor or business situation, has access to Confidential Information and has been advised about the confidential character of such information, must refrain from using or disclosing that information without just cause or the consent of the owner or the authorized user of it.

Although a duration term for the protection of Confidential Information is not specifically contained in the law, legal precedents and general opinions in this matter consider that protection is provided for as long as such Confidential Information is not disclosed or becomes known by the public.

C. INTELLECTUAL PROPERTY RIGHTS

1. Copyright

Argentine Copyright Act (ACA) dates back to 1933 and has been updated in several occasions. Unlike most of Latin-American laws, it is not based on the concept of “author’s rights” but rather “intellectual property rights” more akin to the Anglo-Saxon copyright laws. As a consequence, phonograms and broadcasting programs are protected as works.

Argentina has adhered to the UCC and to the Berne Convention (Paris Act 1971) whose regulations are self-applicable (Argentine Constitution Section 75:22). As a consequence of Argentina’s adherence to TRIPS, the copyright law was modified to expressly protect computer programs and databases. The country is among the first States to adhere to the 1996 new WIPO treaties.

Protected works follow the guidelines of Article 2 of the Berne Convention. Authors enjoy a reproduction, adaptation, translation, exhibition, public communication, distribution and rental rights. Corporations can be full copyright owners. Derivative works as translations, anthologies, comments, extracts, musical arrangements and other similar transformations may also be protected.

Duration of copyright for authors is seventy years p.m.a., and for works owned by the State, universities, corporations, etc., fifty years as from the date of fabrication.

Registration is statutory for Argentine works and not for foreign works as a result of Argentina’s adherence to the UCC and the Berne Convention. Publishing and publication contracts are regulated by law. Copyright is transferable; transference of rights has to be recorded for its validity vis-à-vis third parties. Argentine law recognizes moral rights.

Copyright infringement and piracy are punished as crimes, and plagiarists, pirates and other forms of fraud against copyright are subject to criminal procedures.

2. Registration of Author's Rights

Notwithstanding what is established in the above mentioned treaties, it is strongly recommended to file for the deposit of the works. A clause of the intellectual property law establishes that protection is afforded to deposited works. Its validity has not yet been challenged at the courts.

Under current practice, it is possible to locally register the underlying creation or work, in either of two forms of registration:

- (i) **Non-published Work:** This first form of registration is completed by filing a form and depositing with the Intellectual Property Office the material or tangible expression of the work or creation in a sealed envelope. The Undisclosed Deposit will only give evidence of the date on which the depositor already had the creation or work in its hands, but it does not necessarily imply its ownership. If an infringement to the depositor's rights occurs, the depositor will be required to demonstrate the ownership of the work or creation.
- (ii) **Published Work:** This form of registration applies to works and creations that are "published" or will be "published" for commercial exploitation. All applications made under the Disclosed Deposit registration form are published for ten days in the Official Gazette. Such publication should include the name of the work, the author, type of work, and any other characteristic of the work, which may identify it. If after one month as from the last publication, no oppositions to such registration are filed, the Intellectual Property Office will issue the "Certificate of Intellectual Property". If oppositions have been filed, notice of them will be served on the applicant, who should answer them within five days as from such notice. The Director of the Intellectual Property Office shall decide on the matter within the following ten days.

The applicant may comply with the Disclosed Deposit form of registration by filing the respective form with the Intellectual Property Office. The public may have access to the work and the Intellectual Property titleholder will not be able to prevent the private use of such work by the public. Of course, the Intellectual Property titleholder may be able to prevent the commercial or public use of the work.

The Intellectual Property titleholder will be presumed to be the owner of the work and the burden of producing sufficient evidence to the contrary is placed on the challenger or infringer of such right.

VIII. ANTITRUST

The subject matter is ruled by Antitrust Law 25,156, enacted on August 25, 1999, and later amended by Decree 396 of April 1, 2001. The Law contains new provisions with regards to the authorization procedure for M&A transactions involving economic concentration.

The law has two main aspects: the punishment of illegal actions and prior control of mergers and acquisitions.

A. ILLEGAL ACTS

The basic principle of the law is that it prohibits acts that restrict competition in such a way that may result in a damage to the general economic interest or that constitute an abuse of a dominant position.

There is no definition in the Antitrust Law of the general economic interest. Though, from several cases, it can be inferred that it is the correct functioning of the market. The adoption of this concept “general economic interest” means that the Antitrust Law does not adopt any prohibition *per se*.

Along these lines, the correct functioning of the market is not affected when the illegal conduct does not have a large impact in the market (percentages are not established) or when the benefits of the conduct exceed the damage caused by the restriction (such as distribution agreements).

Conducts that are considered illegal are the typical ones, such as price fixing, market divisions, agreements to limit development, offer, research between competitors, tying clauses, discriminatory practices, unjustified negative to sell, etc.

With regards to a dominant position, basically one has such a position when there is no need to consider the reaction of competitors to make a decision in the market.

The Law establishes that the authority of application is the Antitrust Court (*Tribunal de Defensa de la Competencia*), but since it has not yet been formed, the National Antitrust Commission (*Comisión Nacional de Defensa de la Competencia*), authority of application of the former law, is still in charge of the application of the law.

Procedures can be started by the Commission unilaterally or upon request by a third party. Both the complaining party and accused party have the right to offer evidence and present their arguments in writing. Fines can be established to violators, in amounts that may range between \$ 10,000 and \$ 150,000,000. Amounts are established taking into account: a) the loss caused by the prohibited activity, b) the benefit obtained by the person who performed the illegal activity; and c) the value of the assets owned by those who performed the activity.

The fine, in case of legal entities, can be imposed on the individuals in charge of the company who, due to action or omission, have contributed, encouraged or allowed the illegal acts.

The Commission can also, as a preventive measure, order the immediate cease of the conduct prior to the termination of the legal procedure.

B. CONTROL OF MERGERS AND ACQUISITIONS

The Law defines “economic concentration” as the situation in where one or several companies fall under the control of another by means of the performance of any of the following transactions:

- (i) merger between companies;
- (ii) transfer of an ongoing concern;
- (iii) acquisition of title to or any other rights in shares, or any interest in capital or securities representing debt which could be converted into shares or capital interest, or which carry the right to influence the decision-making of the issuing party when said acquisition gives the grantee the control of or substantial influence over it; or
- (iv) any other agreement or act transferring the assets of a company to a person or an economic group or granting them conclusive influence in the making of ordinary or extraordinary administrative decisions.

The concept is so broad that it covers every situation in which an increase in a market share or control over somebody that has a market share is obtained. Trademark license agreements and transfers of trademarks fall under the law.

The obligation to apply for approval depends on the economic importance of the transaction. The transaction must be filed when the total business volume in Argentina of the target company and its affiliates exceeds \$ 200,000,000, without taking into account the sales volume of the seller. Notwithstanding the above-mentioned amount, there is no obligation to apply if the amount of the operation and the value of the assets located in Argentina being acquired does not exceed \$20,000,000, unless the unit purchased had sales:

- (i) that exceeded \$ 20,000,000 in the previous 12 months; or
- (ii) that exceeded \$ 60,000,000 in the previous 36 months;

in both cases within the same market.

Notification must be filed with the National Antitrust Registry , a registry created by the National Antitrust Commission, prior to or within a week of the date of execution of the final agreement in the case of a Transfer of an Ongoing Concern, or as from the date of acquisition of an interest which grants control of the company.

Parties failing to file such notification may be punished with a daily accrued fine up to \$ 1.000.000, to be imposed on the expiration of the term of notification for projects of economic concentration, or upon breach of duties or interruption of the violation.

The fine can also be jointly and severally imposed on the directors, managers, auditors and members of the Surveillance Committee, agents, and legal representatives of the legal entity breaching such duty.

An additional penalty-prohibiting the fulfillment of commercial transactions for a period of one to ten years may also be imposed.

The following transactions are exempted from the obligation of submitting compulsory notice:

- (i) acquisition of companies in which the purchaser already holds more than 50% of the shares;
- (ii) acquisition of bonds, debentures, shares which do not carry voting rights, or securities representing company's debts;
- (iii) acquisitions of a company by only one foreign firm which has not previously held assets or shares in other companies in Argentina;
- (iv) acquisitions of liquidated companies (which have not transacted business in the country during the last year).

The Antitrust Commission can authorize a merger process subject to its review, imposing conditions like the sale of certain assets or by forcing the new company to provide services to competitor companies.

The Antitrust Commission is vested with several powers such as:

- (i) to carry out all necessary research, for which purpose it can request individuals and authorities either on a national, provincial, or municipal level, or associations in defense of consumers and users, to furnish all documents deemed necessary;
- (ii) to hold meetings with presumed liable parties, accusing and damaged parties and witnesses and expert witnesses, in order to receive declarations, and ordering confrontation of witnesses. The Court can also request intervention of the public force to compel compliance with decisions;
- (iii) to impose penalties;
- (iv) to issue non-binding opinions on competition and free-market access, as related to laws, official notices, and administrative acts;
- (v) to bring actions and initiate judicial proceedings, for which purpose a legal representative must be appointed;
- (vi) to enter places subject to judicial inspection with the consent of the residents, or with a warrant requested by the Court to the competent judicial authority, who will be bound to decide on the matter within 24 hours from the request;
- (vii) to request the competent judge to order all necessary precautionary measures, for which purpose a judicial resolution must be issued within 24 hours from the request.

As we have previously mentioned, the Antitrust Court has not been created yet, therefore all the duties that should be carried out by this Court are being executed by the National Antitrust Commission.

IX. LICENSING – TRANSFERENCE OF TECHNOLOGY

Argentine Law No. 22,426 on Transference of Technology provides that any agreement whereby a foreign company grants licenses or assigns a mark, know-how or other industrial property rights for value to a company domiciled in Argentina, the license or assignment agreement in question must be filed with the Argentine authorities merely for informative purposes.

No forbidden or mandatory clauses are established. The parties may freely negotiate the terms of their agreement.

Failing to file the relevant agreement does not impair its enforcement, but shall only have tax consequences. When the agreement is not filed, our law establishes that licensee or assignee is not entitled to deduct royalty payments as expenses and that the percentage of the income tax levied with respect to such payments is higher.

Two original agreements are filed with the applicable authority, the *Instituto Nacional de la Propiedad Industrial* (INPI). A translation must be provided if the relevant agreement is not in Spanish. No special documents are required, but the local company must complete an application form furnished by INPI that is filed together with the agreements.

X. CONSUMER PROTECTION

Consumer Protection Law No. 24,240, enacted on October 15, 1993, sets forth a system meant to protect consumers from negotiation to delivery and performance of goods and services.

Consumers are defined as those individuals, or even companies, that acquire or use a good or a service for value, as long as that good or service is meant for personal benefit and not applied to an economic process.

According to the Consumers Protection Law, whoever manufactures, imports, distributes, or sells goods or provides services should give consumers detailed, efficient, sufficient and true information about the characteristics of the goods or services. Those goods and services should be offered in such a manner that will not cause, under ordinary conditions of use, hazard to the physical integrity of consumers.

Any offer addressed to potential consumers should contain a description of the period during which that offer will be valid, and will be binding to whoever issued that offer for that period.

Despite the validity of the rest of the relevant contract, some provisions that will be considered null and void when (i) they limit the responsibility for injuries or damages; (ii) they represent a waiver of right by the consumer; or (iii) they impose the burden of proof on the consumer.

If a consumer suffers damage, any and all producer, distributor and trader are jointly liable, unless they can prove that damage is not attributable to them.

Failure to comply with this rule may result in the imposition of fines from \$ 500 to \$ 5,000,000 by the National Direction of Consumer Rights.

Claims may be filed by a single consumer or by any consumers' association, but there are several discussions in different Courts regarding the actual scope of consumers' associations right to file claims.

XI. ENVIRONMENTAL LAW

A set of federal, provincial and municipal laws regulate environmental issues. This legal framework establishes standards for protection of the environment and penalties that are applied to persons held liable for having caused environmental damage.

The main laws that govern this field are:

- (i) Hazardous Waste Law No. 24.051/91, which contains rules for the production, transport, treatment, handling and disposal of hazardous waste. All persons responsible for any such activities must be registered with a National Registry created by the Hazardous Waste Law and obtain a license to that effect, which shall be renewed annually. The breach of the rules set forth by the Hazardous Waste Law implies the application of fines, including the closure of the facilities.

It is important to note that certain crimes against public health, such as for instance, the poisoning of water, food or medicine, may be punished with fines and/or imprisonment.

- (ii) Law on Integral Management of Industrial Waste and Service Activities No. 25.612/02, which contains provisions on the inter-jurisdictional transport of industrial waste and service activities.

Like the former, it provides that when the infringer is a company, its directors, or managers shall be jointly and severally liable.

- (iii) Federal law No. 25.675/02, called the “General Environmental Law”, provides for the minimum requirements to attain sustainable and proper environmental management, the preservation and protection of the biological diversity and the implementation of sustainable development.

It further provides that any person who causes environmental damage shall be objectively liable for its restoration to its previous status. If technically impossible, the remedy shall consist on a substitute indemnification (monetary compensation).

There is a duty to contract environmental insurance to cover first the “remedy of the damage”. Said remedy is defined as the restoration to the status previous to the environmental damage.

Section 31 sets forth a joint and several liability; both the companies and their administrators personally being subject to penalties.

Also, as a general rule of tort law, it is possible to recover damages from a person or entity that caused environmental damage. Specifically, in cases where an asset with a hidden defect is transferred and such defect causes an environmental damage after the transfer, the transferor is still liable for any such damage.

XII. CHOICE OF LAW AND JURISDICTION, ENFORCEMENT OF FOREIGN JUDGEMENTS AND ARBITRATION

A. CHOICE OF LAW AND JURISDICTION

Argentine parties to a contract may select the law that will govern such contract provided that such foreign law has a connection to the contract and that it does not contravene Argentine international public policy. Rights related to real estate located in Argentina, however, shall be subject to Argentine law.

Argentine parties may also select the jurisdiction to which their disputes will be subject, provided that the case is a matter of economic interest, unless the Argentine Courts hold exclusive jurisdiction. Insolvency proceedings related to debtors domiciled in Argentina are exclusive jurisdiction of Argentine courts. This choice of jurisdiction may be made before or after the conflict between the parties has arisen.

The choice of jurisdiction should be expressly made by both parties and it may not be implied.

Argentine courts may also have jurisdiction, even if the parties have not chosen so, if Argentina is the place of performance of any of the obligations or if the defendant is domiciled in Argentina.

B. ENFORCEMENT OF FOREIGN JUDGMENTS

The regime that controls the recognition and enforcement of foreign judgments in Argentina is regulated by the different procedural codes. The Judge who will be in charge of that process will be that located at the debtor's domicile. The National Civil and Commercial Procedural Code establishes a process called *exequatur*, and sets forth that if there is any treaty or convention between the country of origin where judgment was rendered and Argentina, the *exequatur* will be ruled by that treaty or convention.

Some of the most important Conventions and Treaties to which Argentina is a party are: the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards, the 1975 Panama Convention on the Recognition and Enforcement of Arbitral Awards, the 1979 Montevideo Convention on the Recognition and Enforcement of Arbitral Awards, the 1994 Ouro Preto Protocol and the 1999 Las Leñas Protocol of Jurisdictional Assistance and Cooperation.

If no treaty or convention is applicable, Courts will enforce foreign judgments without further discussion of its merits if (i) the decision was issued by a competent court and is final, (ii) the decision contains a certificate of authenticity, (iii) the parties were duly served with summons and given the opportunity to file a defense, (iv) the decision is valid in the jurisdiction where it was issued, (v) the decision does not violate principles of Argentine public policy, and (v) the decision is not contrary to a prior or simultaneous decision of an Argentine court.

To enforce a foreign court decision in Argentina, it is necessary to have the exequatur, petitioned to the Court of First Instance. The party on which the decision is enforced shall restrict its acts to the control of the procedure and the substantial requirements, but lacks the chance to fully discuss the matter dealt with in the court ruling. To obtain the exequaturs, payment of the court tax may be necessary.

C. ARBITRATION

The current legislation governing arbitration in Argentina can be found in various legal instruments, both domestic and international.

Arbitration proceedings are mainly governed by the National Code of Civil and Commercial Procedure (NCCCP), and by similar provisions of the many Provincial Procedural Codes, that in most cases follow the provisions of the latter.

The subject matter of the arbitration shall allow negotiation and the parties shall have capacity for such purpose. The award has the effects of a court judgment and arbiters may not order execution or compulsory measures. The parties may waive the defenses, except clarification and nullity. Defenses are heard at court, except requests for clarification.

No distinction is made between domestic and international arbitration. International arbitration is permitted as a result of the principle of extended jurisdiction *prorogation for*, also included in the NCCCP. But it is generally accepted that the NCCCP provisions are inadequate for modern arbitration, so UNCITRAL rules are thus accepted by most of the arbitration organisms in Argentina.

Argentina has also ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention on International Commercial Arbitration of Panama and Montevideo. The latter provides that the award must have attained *res judicata* status in the country in which was rendered.

In addition, the Argentine Constitution recognizes the supremacy of international treaties over domestic legislation (Section 75, Subsection 22). This principle applies to both arbitration proceedings with seat in Argentina and the enforcement of foreign awards.

XIII. INSOLVENCY AND BANKRUPTCY

Bankruptcy and insolvency of business entities are subject to Bankruptcy Law No. 24,522 (“Bankruptcy Law”), as amended. Basically, the Argentinean bankruptcy system consists of two proceedings: reorganization and liquidation.

A. REORGANIZATION (Creditors Composition)

1. Court Reorganization Proceedings or *Concurso*

A *Concurso* may only be started upon the debtor’s request. The *Concurso* is a tool provided by the law to protect debtors undergoing a situation of financial distress. Both individuals and companies can be subject to a *Concurso*. In addition, two or more companies that on a permanent basis make up an economic unit can request the joint opening of a *Concurso*. Reorganization proceedings give the debtor the opportunity to propose a solution to its financial problems through the presentation of a reorganization plan. When creditors do not approve this solution, a short period will begin in which any party may offer solutions and acquire the company (called “cramdown”). If this stage is unsuccessful as well, bankruptcy will be declared.

Reorganization proceedings are controlled and supervised by a commercial court that acts through a trustee (*síndico*). Even if the debtor who files for a *Concurso* retains management of its assets under the supervision of the trustee, he cannot undertake certain types of transactions without court authorization. For instance, the debtor has to request authorization to carry out any transfer of assets and to undertake any acts that exceed the ordinary management of its business. Acts carried out in violation of this provision are ineffective with regards to the rest of the creditors.

One of the most important effects of the filing of a *Concurso* is the suspension of interests on the unsecured credits (i.e. not guaranteed with pledge or a mortgage) together with the suspension of the procedure of onerous claims initiated against the debtor whose cause originates prior to the filing of the *Concurso*. Thereafter, every legal action based on onerous claims has to be brought in the same court of the *Concurso*. However, by means of Law 26.089 (enacted on April 10, 2006) plaintiffs of pecuniary and or labor legal claims are entitled to elect to continue their legal actions at the court that heard the claim at first instance. This procedural change was made so that the commercial courts are somewhat relieved from their heavy burden. The filing of a *Concurso* produces the prohibition to commence any new legal actions against the debtor except for labor claims, which can be initiated even after the filing of the *Concurso*. The trustee will also have to be part of any new legal action commenced against the debtor, notwithstanding the jurisdiction where it has been filed. Likewise, the Judge, upon advice of the trustee, can order the continuation of any valid contract with reciprocal performance obligations.

The commercial court that has jurisdiction over the *Concurso* can authorize the direct payment of labor claims, such as unpaid salaries and claims arising out of labor accidents, with available liquid funds from the operations. If the debtor does not have freely available liquid funds, 1% of the

monthly gross income of the debtor company will be reserved for the payment of these privileged claims.

After the period for the filing of proofs of claims has elapsed, those ordinary creditors that have been recognized as creditors are entitled to vote the approval or rejection of the reorganization plan, filed by the debtor. The majorities required by the Bankruptcy Law in order to approve the proposal are absolute majority of all the creditors representing two thirds of the admitted liabilities within each and all categories of creditors for which a plan was filed. If, subsequently, the debtor is unable to comply with any of the terms of said plan or with the required majorities, then the Court has to declare the bankruptcy of such debtor. During the whole *Concurso* proceeding, the debtor manages and controls its assets and operations, notwithstanding the fact that the trustee has the obligation to oversee said administration and that certain acts are subject to authorization by the court.

Law 25.589 amended the Bankruptcy Law by including some important issues such as: filing of claims by trustees on behalf of bondholders, deletion of limits on debt reduction in proposals, provision that intangible assets have to be considered part of the assets of the debtor's relevant reports, and a substantial modification of the Extrajudicial Reorganization Agreement, among other changes.

2. Extrajudicial Reorganization Proceeding or *APE*

The *APE* consists of a private negotiation of a contractual nature that links a debtor with all or part of its creditors. Its advantages are mainly the expediency, cost-savings and discretion that the process provides since its purpose is that the reorganization process remains, as much as possible, in a private environment.

The *APE* consists of a private workout agreement entered into by and between the debtor and its creditors, and is only made public after it is submitted by the debtor to relevant courts for approval. The *APE* will be enforceable upon approval by a commercial judge

Freedom of form and content are some of the most important characteristics of the *APE*. It may entail a reduction of credits, postponement, refinancing or full waiver of the credit, the assignment of assets as security, the capitalization of credits or any other solutions that the parties might agree on.

Contrary to what happens in the case of lack of approval of a *Concurso*, the rejection of an *APE* does not necessarily result in the bankruptcy of the debtor. This is because, among other reasons, the debtor –in order to qualify for *APE* protection- does not necessarily have to be in a situation of financial distress. However, in the event the *APE* was declared null at the request of a creditor, the judgment ordering the nullity of the agreement must contain the bankruptcy declaration of the debtor.

For court approval of an the *APE*, the same majorities as for a judicial reorganization proceeding are required; i.e. it is necessary that the absolute majority of ordinary creditors (half plus one) representing two thirds of the total general (ordinary) liabilities approve the *APE*. The suspension of

legal actions filed against the debtor only becomes effective once the publications of legal notices announcing the filing of the APE for its legal approval, has been made. The accrual of interests on debts is not suspended by the filing of the APE, as opposed to what happens with a *Concurso*. In the case of an APE, provision on interests should form part of a specific arrangement.

The APE, once approved, produces effects for all the regular creditors whose credits originated prior to the filing, although they did not take part in the proceeding.

B. LIQUIDATION (Bankruptcy or *Quiebra*)

Quiebra is a liquidation proceeding in which the debtor loses the management and disposition of all of its assets, which are then auctioned off. The *Quiebra* may be petitioned either by one or more creditor(s) or by the debtor. After bankruptcy is declared, the bankrupt debtor may not engage in business. The profits from the sale of the assets of the debtor are used to pay its debts according to an order of priorities established by the Bankruptcy Law. *Quiebra* proceedings end with the liquidation of all of the debtor's assets or, in certain cases, with the transfer of a bankrupt company or some of its assets, as an ongoing concern.

The effects of the *Quiebra* may be extended to:

- Any person or entity acting apparently in the name of the debtor when carrying out acts for its personal benefit and/or disposed of the assets as if they were its own and in fraud of the creditors.
- Those who control the company when they unduly deviated the company's purpose.
- Those entities or persons with whom the debtor's assets and liabilities are commingled in a way that most of those assets and liabilities cannot be clearly identified.

C. FOREIGN CREDITORS

Creditors whose credits are payable abroad may apply to collect their credits in the *Concurso* or *Quiebra* opened in Argentina only if the credits that are payable in Argentina can be collected, under the same conditions, in the same country where the first credits are payable.

Bankruptcy Law requires foreign creditors to demonstrate reciprocity of treatment between local and foreign credits, which means that local creditors may be able to collect their credit in the same country where the foreign credit is payable.