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# Argentina

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# I. Argentina

## A. Foreign investment

### i. Authorisations versus limitations or prohibitions

#### A. ARGENTINE FOREIGN INVESTMENT REGIME

In general terms, foreign investments in Argentina are regulated by a framework of international treaties and Argentine laws that establish, among others, the rules for choice of law and jurisdiction, legal treatment of foreign investors, monetary policy and foreign exchange (FX).

Particularly, foreign investments are governed by the Argentine Foreign Investments Law No 21,382, which states, as a general principle, that foreign investors enjoy the same status and have the same rights that the Argentine Constitution affords to local investors. However, there are certain regulated areas that impose restrictions on foreign investors, such as antitrust regulations, FX matters, the broadcasting industry and the acquisition of rural land.

#### B. FREE CHOICE OF LAW AND JURISDICTION

##### 1. Choice of law

Argentine law generally permits parties to a contract to select the laws that will govern their agreements provided some connection to the system of law that is chosen exists. Further, the choice of foreign law will only be valid to the extent that it does not contravene Argentine international public policy (*orden público* (public order)). Typical public policy laws include criminal, tax, labour and bankruptcy law, as well as inheritance and family rules.

Rights associated with real estate (eg, in rem rights), the ability to acquire real estate and the formal requirements with regard to legal acts connected with real estate are all governed exclusively by local laws. The same principles apply with respect to movable property permanently located in Argentina.

##### 2. Choice of jurisdiction

Argentine courts have jurisdiction whenever: (1) the defendant is domiciled in Argentina; (2) the place for performance of any of the obligations is located in Argentina; or (3) Argentine courts have been chosen as the applicable forum (subject to certain restrictions). With respect to debtors domiciled abroad, local courts have jurisdiction only to the extent that the debtor has assets in Argentina, in which case, insolvency proceedings will only cover such assets.

Argentine courts acknowledge that parties to a contract may choose a jurisdiction other than Argentina for the settlement of any disputes arising under a contract provided that there is a connection with such jurisdiction and the dispute relates to pecuniary rights.

While there are still FX controls in place in Argentina, when the current Administration took over (ie, 10 December 2015), the Central Bank of Argentina (the ‘Central Bank’) revised all FX and trade rules, and issued many FX regulations aimed at abrogating all existing restrictions – especially those related to the outflow of funds. As of today, the only FX regulations that remain in place refer to operational and reporting aspects.

All transfers of foreign currency in and out of Argentina must be made through the Argentine Foreign Exchange Market (the ‘FX Market’), with the participation of an Argentine licensed financial entity or FX agency, and must comply with formal requirements set forth in the regulations periodically issued by the Central Bank as the regulatory authority of the FX Market, including the registration of such a transfer under a specific code (*códigos de concepto*), for statistical purposes only.

Currently, both Argentine and non-Argentine residents can freely access the FX Market. Access to the FX Market is done at the market exchange rate. While the exchange rate is determined by the relevant counterparties, the Central Bank has the power to intervene by buying and selling foreign currency on its own account, a practice in which it engages on a regular basis.

An information regime regarding foreign debts and direct investments remains in place for Argentine residents, who must submit to the Central Bank information regarding capital and investment fund shares; non-negotiable debt instruments; negotiable debt instruments; financial derivatives; and land, structures and real estate. The information must be delivered through an electronic form available at the Federal Tax Authority’s website on an annual and quarterly basis or, depending on the case, on an annual basis only. Such information is to be used exclusively for statistical purposes.

#### *ii. Treatment of foreign investment in infrastructure initiatives and PPP projects*

The Federal Government and some provincial governments have enacted regulations to foster private initiative in public interest-related projects.

Some jurisdictions have passed regulations that allow private investors to propose public works or projects to the relevant government entity in order to meet public needs. According to such regulations, should the proposals be declared of public interest by the corresponding public entity, the private investor who initially filed the proposal will get certain advantages in the subsequent competitive bidding process.

Legal frameworks for the participation of private investors in the design, construction, operation, maintenance and financing of infrastructure works are in place at the federal level and in some provinces.

In 2017, the Federal Public–Private Partnership Contracts Regime (the ‘PPP Regime’) was established via Law No 27,328 and its implementing Decree No 118/2017, as amended by Decree No 936/17. The provinces and the Autonomous City of Buenos Aires have been invited to adhere to the PPP Regime.

The PPP Regime is an alternative contracting method for public works and public concessions, thus its implementation does not preclude the use of traditional public procurement systems. For each project, the public sector may consider the most suitable contracting method to meet public needs.

Projects governed by the PPP Regime will not be subject to Public Works Law No 13,064, Concession of Public Works Law No 17,520 or Public Procurement Decree No 1,023/01.

The PPP Regime promotes balanced and predictable cooperation between the private and public sectors, allowing risks to be distributed adequately between the contractor and state. It implies a shift in the traditional paradigm of public contracts, as it excludes or limits the traditionally recognised public law prerogatives of the administration (eg, the power to unilaterally modify or terminate a contract for reasons of public interest, the power to force the private contractor to continue the project despite the state's failure to comply with its own obligations and the limitation of state liability).

Regarding the remuneration of the contractor, the PPP Regime establishes the right to maintain the financial-economic balance of the contract. The prohibition of indexation set forth by Convertibility Law No 23,928 is excluded. In addition, the parties may agree for the consideration to be payable in foreign currency. Regarding the consideration structure, the PPP Regime provides the possibility of assigning funds, assets, loans or taxes, the creation of surface and/or use rights, or any other contributions by the state.

Technical disputes or any other type of dispute arising from contracts celebrated under the PPP Regime may be submitted to technical panels and/or local or foreign arbitral tribunals. Review by local courts of the merits of awards is expressly excluded.

The PPP Regime provides a broad framework of principles and parameters that must be completed by the relevant bidding terms and conditions, and the contract that will define the rights and the specific undertakings of both parties.

In 2018, the Federal Highway Authority launched the Highways and Safe Routes PPP Network Project, a public bid for the construction, operation and maintenance of roads, which is yet to be awarded. This is the first initiative to be carried out by the Argentine Federal Government through the PPP Regime.

### *iii. Treatment of foreign investment in oil and gas and mining activities*

#### A. OIL AND GAS

##### 1. Domestic policy on oil and gas

Argentina is a major player in the South American hydrocarbon market. According to the 2016 edition of the BP Statistical Review of World Energy, Argentina is the largest producer of natural gas and the fourth largest of crude oil in South America. Hydrocarbons, especially natural gas, have historically accounted for a large portion of the Argentine energy matrix. Until recently, hydrocarbon production and reserve rates had been falling, forcing the country to import increasing volumes of natural gas and liquefied natural gas (LNG), as well as crude oil and liquid fuels. However, recent reports announcing that Argentina has one of the largest in volume shale gas reserves in the world have had a significant impact on Argentina's position as a global energy player. According to the United States Energy Information Administration and Advanced Resources International, Argentina has the second-largest shale gas resources (802 trillion cubic feet) and the fourth-largest shale oil

resources (27 billion barrels) in the world. More than 50 per cent of these unconventional resources are located in the Neuquén Basin. In addition to its favourable geology, the Neuquén Basin has attributes that favour unconventional development: a long history of oil and gas operations, an established and thriving service sector, and strong access to domestic and international markets.

Over the last few years, under the presidency of Mauricio Macri, the country has radically changed its policies and attitude towards private investment, creating a friendlier business environment. That said, Argentina is still facing financial and economic difficulties, including high inflation rates and lack of liquidity.

However, the current policy of the Federal Government is aimed at restoring the necessary conditions for Argentina to recover and maintain its self-sufficiency in hydrocarbons supply.

## 2. The regulatory regime

Hydrocarbon resources are severable from the general ownership of property. According to the Argentine Constitution (the ‘Constitution’), as amended in 1994, natural resources, including hydrocarbon reserves, belong to the provinces where they are located. However, the Constitution empowers the national Congress to legislate on hydrocarbon matters.

In 2006, the transfer of hydrocarbon resources from the federal domain to the provinces was implemented through Law No 26,197. The resources transferred were those located in the provinces and in territorial waters up to 12 nautical miles from a baseline, which in Argentina is the mean low-water line along the coast. With Law No 26,197, the enforcement of exploration permits, and production and transport concessions granted by the Federal Government over these resources prior to the law was transferred to the provinces. The provinces have since handled the granting, enforcement and control of such permits and concessions within their territories.

However, offshore resources located more than 12 nautical miles beyond the baseline are in the federal domain and subject to exclusive federal jurisdiction.

Federal Hydrocarbons Law No 17,319 of 1967, as amended (the ‘Hydrocarbons Law’), and several subsequent dispositions have established the basic legal framework for E&P activities. The Ministry of Energy and Mining (the ‘Ministry of Energy’) is the enforcement agency of Hydrocarbons Law at the federal level.

The main objectives of the latest amendments to the Hydrocarbons Law, approved in 2014 through Law No 27,007, are to provide specific rules for the exploration and development of unconventional resources, the extension of current concessions and the granting of new permits and concessions.

Hydrocarbon exploration, development and production require an exploration permit or a production concession granted by the Federal Government or the relevant province, depending on the location of the reserves. Exploration permits and production concessions must be granted through a competitive bidding process and may be transferred with the grantor’s approval.

To become the holder of a permit or concession, companies must register in the registries of oil companies kept by the National Ministry of Energy and, in some cases, the corresponding provincial authorities. Registration is granted on the basis of meeting certain financial and technical standards.

Exploration permits allow their holders to perform exploration and usually require a minimum investment in that activity. The base term of a permit for conventional exploration is divided into two periods of up to three years each, plus an extension of up to five years. For unconventional resources, the base term is divided into two four-year periods, plus an extension of up to five years. In the case of offshore exploration, the base term is divided into two periods of up to four years, plus an extension of up to five years. At the end of the first period of the base term, the permit holder may choose to: (1) revert 100 per cent of the area included in the permit; or (2) keep the entire area and enter into the second period of the base term. At the end of the base term, the holder may choose to extend the term of the permit, subject to reverting 50 per cent of the area.

A permit holder that discovers a commercially exploitable reservoir is entitled to a production concession to develop it. The term of a conventional production concession is 25 years. Concessions for the development of unconventional resources are granted for a term of 35 years. Unconventional production concessions allow conventional E&P as ancillary activities subject to the payment of a production bonus and an additional royalty of three per cent. Offshore production concessions are granted for a term of 30 years. In all cases, the concessions may be extended for successive ten-year periods.

For production concessions, unconventional hydrocarbon production is defined as the extraction of oil and gas through unconventional stimulation techniques applied to deposits in geological formations characterised by the presence of rocks with low permeability. These include shale or slate rocks (eg, shale oil and shale gas, compact sandstone), tight sand, tight oil and tight gas, and layers of coal (ie, coal bed methane).

Holders of permits and concessions are required to pay royalties to the grantor – the Federal Government or provincial government – at a 15 per cent rate for exploration permits and a 12 per cent rate for production concessions. Royalties are increased by three per cent each time a concession is extended, up to a maximum of 18 per cent. Royalties may be lowered to five per cent under exceptional circumstances. Permit holders and concessionaires must also pay the grantor a surface canon based on the acreage of the permit or concession.

### 3. Regulatory bodies

As explained above, the transfer of hydrocarbon resources from the federal domain to the provinces was implemented in 2006 through Law No 26,197. The provinces have since handled the granting, enforcement and control of permits and concessions within their territories.

The Ministry of Energy is the enforcement agency of the Hydrocarbons Law at the federal level.

Although natural gas transport and distribution are under exclusive federal jurisdiction, these activities are subject to a separate regulatory framework (Law No 24,076, as amended and implemented) (the ‘Natural Gas Law’), and the regulator for these matters is the national gas regulator Ente Nacional Regulador del Gas (‘ENARGAS’).

In each oil-producing province (ie, Salta, Jujuy, Formosa, Mendoza, La Pampa, Neuquén, Río Negro, Chubut, Santa Cruz and Tierra del Fuego), there is an agency with specific regulatory powers over hydrocarbon upstream operations.

#### 4. Oil and gas rights

The Hydrocarbons Law provides for the grant by the owner (ie, the Federal Government or relevant province) of the mineral rights, surface survey permits, exploration permits and production concessions to private investors. Permits and concessions had been granted by the Federal Government until 2007 when jurisdiction over the hydrocarbon reserves was transferred to the provinces. However, most of the hydrocarbons currently produced come from concessions that had been granted by the Federal Government.

Under the Hydrocarbons Law, the holder of an exploration permit has the exclusive right to perform the operations necessary or appropriate for the exploration of hydrocarbons within the area covered by the permit. Usually, exploration permits set minimum commitments consisting of a seismic survey and wells. If the holder of an exploration permit discovers commercially exploitable quantities of crude oil or natural gas, it may apply for, and is entitled to acquire, an exclusive concession for the production and development of these reserves.

#### 5. Transportation by pipeline

The transportation of hydrocarbons through pipelines requires a concession or a licence from the Federal Government or province, depending on whether the relevant pipeline system crosses into another country or runs across two or more provinces, or is limited to the territory of a single province. These permits can be obtained via two regulations: the Hydrocarbons Law, which applies to all hydrocarbons, and the Natural Gas Law, which is only applicable to natural gas.

Under both frameworks, transportation services are defined as a public service and therefore cannot be curtailed or interrupted by the carrier, except if there is a force majeure event or other event that affects the operating conditions of the transportation facilities. The services are also subject to open access and regulated tariffs.

Under the Hydrocarbons Law, the holder of a production concession is entitled to obtain a concession to transport its production of hydrocarbons. A transportation concession is granted for the same term as that of the related production concession: 25 years if it is a conventional concession or 35 years if it is a concession for production of unconventional resources. These concessions may be extended for additional and successive ten-year terms.

The Natural Gas Law governs the transportation, storage, marketing and distribution of natural gas. Each of the transportation and distribution systems is operated under a licence granted by the Federal Government.

This law establishes several restrictions on cross ownership for companies operating in different segments of the gas industry, including producers, distributors, large consumers, transportation companies and marketers. ENARGAS is the enforcement agency of the Natural Gas Law.

Given the country's shortfall of natural gas production to meet domestic demand, the transportation and distribution of gas is subject to a special regulatory regime aimed at satisfying the demand of protected consumers (ie, homes and small businesses). Under this regime, natural gas producers must allocate a set volume of natural gas to meet the demand of protected customers. The delivery



of gas to other customers (ie, natural gas vehicles and industries) is permitted when the demand of protected customers is met.

After years of frozen transportation and distribution pricing, including the rates homes and small businesses pay, tariffs have been substantially increased.

## 6. Downstream

Hydrocarbon-refining activities are subject to Law No 13,660 of 1949, which provides the basic regulatory framework for these activities, whether done by oil producers or third parties.

Refining activities are subject to registration requirements established by the Ministry of Energy. In addition to federal rules, refining activities must comply with provincial and municipal regulations on technical and safety standards.

## 7. Market regulation

The price of liquid fuels has been liberated and gas prices are following the same trend. Natural gas prices for industries can be freely negotiated; however, they are regulated for power generation and residential customers.

The Federal Government has adopted several measures to foster investment in the upstream sector, such as:

- i. incentive programmes (eg, the Gas Plan) to promote gas production by recognising a minimum price of US\$7.50/MBtu for producers were extended for unconventional fields in certain basins;
- ii. the reduction of import duties for oil services' equipment;
- iii. the adjustment of gas prices for residential customers;
- iv. the release of import and export restrictions; and
- v. the promotion of multilateral agreements among producers, provinces and unions to reduce operational costs; and
- vi. incentive programmes.

## 8. Incentive programmes

Over the last few years, the Federal Government has created programmes to promote investment in E&P with the aim of rebuilding gas reserves over the medium and long term so that the country can regain self-sufficiency in gas. The main programmes are Gas Plus and Gas Plan.

Gas produced from projects approved under the Gas Plus programme can be marketed at prices higher than standard regulated prices and cannot be redirected to protected customers. Since 2016, benefits under the Gas Plus programme are no longer available for new projects, but the projects that were already awarded these benefits will continue to enjoy them.

Under its current format, Gas Plan is available for unconventional gas production in the Neuquén Basin. Producers and the provinces in which the gas is produced are entitled to compensation payable by the Federal Government, which is determined as the difference between the producer price and a minimum price, which will decrease from US\$7.50/MBtu in 2018 to US\$6.00/MBtu in 2021. Of the compensation, 88 per cent goes to the producers and the remaining 12 per cent to the provinces.

The Federal Government incentives for the Neuquén Basin are made available under a framework agreement for the oil sector. The Federal Government, Neuquén Province, oil unions and oil companies entered into the agreement in 2017. As part of the agreement, Neuquén agreed not to increase the tax burden on the oil sector, and committed to make investments to improve the province's logistics infrastructure with the help of the Federal Government. It is expected that similar agreements will be reached with other hydrocarbon producing provinces to make the Gas Plan incentives available for the gas produced in the basins of those provinces.

Another incentive was created with Federal Decree No 929/2013. It is available for direct investment projects in hydrocarbon E&P at a minimum of US\$1bn over a five-year term. This regime is also available for direct investments of US\$250m or more over a three-year term. The benefits of this programme include: (1) the right to export a portion of the hydrocarbons produced by the project; (2) the right to export those hydrocarbons free of export duties, or at a zero per cent rate; (3) the right to do as you wish with the foreign-currency proceeds from the export deal; and (4) in the event that there is a shortfall of hydrocarbons in Argentina and exports are restricted to meet local demand, the exporter will be entitled to international prices for the hydrocarbons that could have been exported and were not. In such a case, a compensation mechanism for payment in local currency will be established. In such a case, producers would have a priority right to acquire foreign currency in the official exchange market up to the total amount of the local currency obtained in exchange for the hydrocarbons prevented from export, including the amounts collected for their sale in the domestic market plus any compensation received under the above mechanism.

The benefits of this regime can be enjoyed as from the third or fifth year, depending on the aforementioned investment amounts of the projects, and apply to 20 per cent of the production in the case of onshore projects and up to 60 per cent for offshore projects.

Another benefit for the oil and gas sector is the reduction of the duties for importing capital goods and essential supplies for investment projects.

## B. MINING ACTIVITIES

The basic statute that governs mining in Argentina is the Mining Code. Argentine law is based on the principle that all mineral deposits are state owned. Each province or the Federal Government, as the case may be, is considered to be the owner of the minerals located within its jurisdiction. However, individuals and legal entities may obtain concessions from such bodies to explore and develop those deposits, and may freely dispose of the minerals extracted within the area of the concession.

## 1. Exploration of mineral resources

Exploration permits grant a right to search for mineral resources within a specified area and the right to request a mining concession if a discovery is made during the term of the exploration permit. The provisions of the Mining Code do not apply to oil and gas deposits. The mining of ores used in the nuclear industry (ie, uranium and thorium), although subject to the Mining Code, must comply with additional regulations.

The mining concession is for exploitation and includes the mine and its deposits as well as the buildings, machinery, vehicles and so on used in developing the mine. The law considers this concession to be a real estate property distinct from the title to the surface land where it is located. Once the Mining Authority has registered the mining discovery, the discoverer's rights are incorporated into public deeds and registered with the Registry of Mines, and such a discoverer gets the title of the mining concession. Mining concessions may be sold or transferred like any other real estate property. The transfer document must be notarised and registered with the appropriate administrative mining registry. Mortgages may also be granted for mining concessions once they have been surveyed and such a survey has been approved by the Mining Authority. Because mineral products are movable assets, once extracted, they can be pledged as security for financing purposes.

The law states that concessions may be terminated upon the occurrence of certain events.

Prior to the commencement of exploration works, the mining company must obtain an exploration permit from the provincial Mining Authority (whether the land to be explored is public or private property). The exploration permit grants the explorer the exclusive privilege to explore and eventually obtain a development concession to work any deposit of any mineral (this right is not limited to those mentioned in the petition) discovered within the area of the grant.

## 2. Development of mineral resources

If a discovery is accidentally made, or during the term of an exploration permit, the discoverer must register the discovery with the Mining Authority to apply for a mining concession. In such a case, no exploration permits or mining concessions can be granted to third parties in such a territory until the termination of the mining concession.

## 3. Mining concessions

1. **Acquisition:** Mines are acquired through a legal concession. Mines capable of being acquired through a concession (original acquisition) are: (1) discoveries; and (2) null and vacant mines.

2. **Effects:** A mining concession grants the concessionaire ownership of every deposit found within its boundaries. However, the discoverer must inform the Mining Authority of the existence of any mineral different from that registered. This information is needed for determining the annual fee and required minimum capital investment.

3. **Withdrawal:** Concessionaires can withdraw from a mining concession through a direct and spontaneous act that informs the Mining Authority of their decision to not move ahead with the mining works. A written declaration must also be filed with the Mining Authority.

4. Mining fee: Mines are awarded through the payment of an annual fee established by the Argentine Congress and paid to the Federal Government or provincial government, depending on the location of the mines.
5. Investment plan: The concessionaire must submit an estimate of the capital investment plan to the Mining Authority. The required minimum capital investment is 300 times the amount of the annual fee. Investments must be for: (1) works for mine workers; (2) the building of camps, roads and other constructions for exploration purposes; and (3) the acquisition of machinery, facilities and production equipment that will permanently be at the mine.
6. Termination of the mining concession: Mining concessions are terminated for the following reasons: (1) lack of payment of the annual fee; (2) lack of filing of the investment plan estimation; (3) investments made contrary to the requirements of the Mining Code; (4) the amount of the investment made is lower than 300 times the annual fee; (5) lack of filing of the annual affidavit on the development of the investment plan; (6) committing fraud in the annual affidavit for the development of the investment plan; (7) lack of compliance with estimated investments; (8) a modification or reduction of the estimated investment without prior notice; (9) withdrawal of assets that cause the reduction of the investments committed in the investment plan; and (10) inactivity of the mine for over four years.
7. Specific tax treatment: Mining activities have special tax incentives, which should be carefully analysed in the decision-making process for a new investment in the area. Legal statutes on tax incentives provide for: (1) the financing or reimbursement of value added tax (VAT) payments made by mining companies; (2) a 30-year tax stability regarding taxes in force at the time of filing the feasibility report; (3) the beneficiaries have the right to deduct from their income tax statements 100 per cent of the amounts invested in prospecting, special research, mineral and metallurgical tests, pilot plants, applied research and other works aimed at determining the technical and economic feasibility of a project; (4) the possibility of accelerating (over three years) the depreciation of investments made on housing, transportation, construction of plants and equipment required for mining activities; (5) the exemption from paying income taxes derived from profits of the mines and mining rights, used as payment for the subscription of shares of registered beneficiary companies; and (6) a three per cent cap on royalties, among other benefits.

#### *iv. Treatment of foreign investment in real estate*

##### A. RESTRICTIONS

Foreign ownership of real estate is unrestricted except for limitations on: (1) ownership or possession of rural land; and (2) acquisition of properties located within national security zones.

#### 1. The rural land regime

The Rural Land Law No 26,737 and its implementing Decree Nos 274/2012 and 820/16 (the 'RLL') impose limits on the ownership or possession of rural land by foreign persons or legal entities.

1. Scope: The RLL's purpose is to regulate, with regard to individuals and legal entities, the limits to ownership and possessions of rural land, which are defined as any piece of land outside the urban grid, regardless of its location or destiny. Foreign ownership over property or possession of rural land is deemed as any acquisition, transfer, or assignment of possessory rights, whatever the type, name and extension of time imposed on the parties, in favour of the subjects reached by the RLL's scope.
2. Restrictions: The RLL sets forth the following limits to individuals, legal entities or contractual forms of association:
  - i. Foreign ownership of rural land shall not exceed 15 per cent of the total amount of 'rural land' in the whole Argentine territory or in the territory of the relevant province or municipality where the relevant land is located.
  - ii. Individuals or corporations of the same nationality will not be able to own or possess rural land that represent more than 30 per cent of the 15 per cent previously mentioned.
  - iii. Ownership or possession by the same foreign owner shall not exceed 1,000 hectares in the 'core area' or the 'equivalent surface' determined according to the location of the land that is to be defined by the Interministerial Council of Rural Lands (Consejo Interministerial de Tierras Rurales).
  - iv. Foreign legal entities or individuals shall not be owners of rural land that comprise or are located beside 'permanent and significant bodies of water'.
  - v. foreign legal entities or individuals shall not be owners of land located in security zones, other than in accordance with the exceptions and the procedures established in the security zones' regulations.
3. Subjects reached by the RLL are:
  1. foreign individuals, except those who: (i) have a ten-year residence; (ii) have Argentine children and have a five-year residency; and (iii) have been married to Argentine citizens for at least five years prior to the transfer of the property and have a five-year residency in the country; and
  2. legal entities in which more than 51 per cent of the stock or a portion sufficient to prevail in corporate decisions is held by foreign individuals or legal entities held by foreign individuals or legal entities. Other forms of 'control' or legal vehicles are also subject to the limitations of the RLL.
4. Consequences of non-compliance: The RLL sets forth that all legal acts that are executed in breach of its provisions shall be null and void, and the authors and participants shall not have any right to claim compensation for their illicit act. The pretended appearance of Argentine individuals as owners to comply with the ownership required by law, in order to breach the provisions of the RLL, is prohibited. Such a circumstance shall be considered an illicit and fraudulent simulation.

## 2. Security zones

The national security zones (the ‘Security Zones’) are areas surrounding international borders and certain military and civil facilities in the interior of Argentina. The width of the Security Zones varies from case to case. The National Executive Branch can amend the width of the Security Zones taking into account the situation, population, resources and national defence interests.

The Security Zones’ regime states that it is in the national interest that properties located within Security Zones belong to native Argentine citizens. For this reason, any and all sales, transfers or leases of properties located within the Security Zones are subject to the prior approval of the Security Zones Commission (SZC). Likewise, the SZC’s prior approval is required for: (1) mergers and transfers of the controlling stocks in companies that own a property located in a Security Zone; and (2) the conversion, merger or spin-off of a corporation that owns properties in a Security Zone. Only Argentine individuals are exempt from the Security Zones’ regulations.

### B. ZONING AND RELATED MATTERS CONCERNING THE USE AND OCCUPATION OF REAL ESTATE PROPERTY

Real estate developments in Argentina are basically governed by provincial and municipal zoning regulations and building codes; therefore, they differ in each jurisdiction. The Federal Government sets the minimum environmental standards for the protection of the environment, and the provinces and municipalities establish specific standards and implementing regulations.

Control of proper zoning, land use, building codes and other restrictions is carried out by provincial and municipal authorities. Environmental compliance is controlled at the federal, provincial and municipal level.

## v. *Treatment of foreign investment in the rendering of public services*

### A. INTRODUCTION

Argentina is organised as a federal system. The Federal Government coexists with 24 local governments (ie, 23 provinces and the City of Buenos Aires) and more than 2,000 municipalities.

Administrative law is of a ‘local’ nature. The Federal Government, each province, the Autonomous City of Buenos Aires and the municipal governments may enact or issue their own laws or regulations on administrative matters. Such laws and regulations must comply with the Argentine Constitution, as well as with the constitution of the relevant province or the Autonomous City of Buenos Aires. In most cases, provincial administrative law has not been autonomously developed, so generally speaking, the same administrative law jurisprudence and principles are followed at federal and local levels.

### B. PROCUREMENT REGULATIONS

Public procurement is considered a typical administrative matter, so it is governed by administrative law. Contracts executed by administrative agencies are governed mostly by administrative law rather than civil or commercial law.

Administrative law is local as opposed to federal. Each province and the Autonomous City of Buenos Aires may enact its own laws and regulations regarding public procurement. Procurement laws and regulations are generally applicable to most of the contracts entered into by the government including, among others: (1) public works contracts; (2) public service concessions or licences (eg, utilities); (3) supply agreements; and (4) consulting services agreements. Generally, government contracts are governed by the rules set forth in the relevant legislation, as supplemented by the specific bidding terms and conditions issued ad hoc when the bidding and tender process is called, and the particular terms of the contract.

The general principle is the need that procurement must be done by means of a competitive bidding process that must ensure transparency and equality between all bidders. Under exceptional circumstances, procurement may be privately tendered or contracted directly.

The bidding terms and conditions usually impose certain economic and technical requirements (eg, expertise in similar works, a minimum net worth and certain debt ratios) for the granting of public contracts. 'Buy Argentine' requirements are also applicable at both federal and local levels.

#### C. PUBLIC WORKS AND UTILITY CONCESSIONS

Depending on their location and scope, contracts for public works and utilities may be subject to federal, provincial or municipal regulations. Thus, the authorisations required to carry out public works or to operate a utility may vary from one jurisdiction to another.

The Federal Government is currently developing Plan Belgrano, a programme of infrastructure projects to enhance the development of the provinces in the north of Argentina. It includes railways, highways, roads and ports. Another programme, called Plan Patagonia, is for infrastructure projects to foster the development of the southern provinces, including by building airports, railways, roads, and conventional and renewable power generation projects.

## B. Offshore vehicle providers in Latin American countries

### *i. Introduction*

Argentina has a continental law system and it is organised as a federal republic. Consequently, in accordance with the Argentine National Constitution, each of the 23 provinces and the Autonomous City of Buenos Aires (which also is the Federal Capital of Argentina) pass their own provincial constitution and laws, and certain powers are delegated to the Federal Government. As a result, the National Congress is vested with the power to enact, among others, federal law, general law and, specifically, the national civil and commercial codes, which include those matters related to companies with profit-making purposes. In October 2014, The National Congress passed Law No 26,994 of the new National Civil and Commercial Code and abrogated the prior national codes, namely the National Commercial Code and National Civil Code, that were applicable for the last 150 years in Argentina.

On the other hand, pursuant to the aforementioned delegation of powers, in 1984, the National Congress also enacted the General Company Law (Ley General de Sociedades 19,550, hereinafter

as amended, referred to as the ‘GCL’), which is still in effect and regulates all matters related to the different types of companies, including those issues concerning the recognition of companies organised abroad as well as the activities they perform in Argentina.

As introduced above, due to the federal organisation of Argentina, each province is autonomous and retains the power to regulate on local control and registration of companies that aim to perform their main activities within their respective territories. As a result of such autonomy of powers, registration rules may vary from one provincial jurisdiction to another. The most representative case of this autonomy is the one of the Autonomous City of Buenos Aires, which is the capital city and the principal port of Argentina, thus being the hub destination for most foreign investors.

Because of the limitations of this article, we do not intend to cover all the aspects regarding the legal treatment offshore companies in Argentina, but rather to present a short practical guide about the most prominent aspects to be taken into consideration pursuant to the law of Argentina, and most importantly, the local regulations adopted in the Autonomous City of Buenos Aires.

## *ii. Offshore companies under the GCL*

The GCL does not contain any special regime for offshore companies as such, other than the general regime for foreign companies that are regulated by the provisions therein concerning the recognition of companies organised abroad and the way they may perform business in Argentina. However, as introduced above in the first section, it is important to mention at this point that offshore companies are subject to certain restrictions imposed by state law. Therefore, for the sake of clarity, it is worth insisting that a company organised abroad shall always consider both the federal law and the state law of the jurisdiction where it intends to perform its main activities in Argentina.

### A. RECOGNITION OF COMPANIES ORGANISED ABROAD

First, it must be stressed that the GCL upholds the constitutional principle of equality under the law; consequently, companies registered in Argentina and those organised abroad must be treated equally. Furthermore, in connection with the constitutional principle of the sovereignty of Argentina, the GCL requires companies organised abroad willing to do businesses in Argentina to be duly registered and to comply with certain formalities before the corresponding Registry of Commerce of the chosen jurisdiction.

Second, the general principle regarding recognition of the existence of companies organised abroad is provided by Article 118, the first part, of the GCL, which upholds the *locus regit actum* canon and thus prescribes that ‘the existence and form of a company set up abroad shall be governed by the laws of the place where it was organised’.

### B. DIFFERENT FORMS FOR COMPANIES ORGANISED ABROAD TO PERFORM ACTIVITIES IN ARGENTINA

The GCL regulates three legal ways for companies organised abroad to perform activities in Argentina. In such a respect, a foreign company can: (1) carry out isolated acts; (2) establish a permanent representation (ie, branch, agency, etc); or (3) organise or participate as members of local companies (ie, subsidiaries). Different requisites apply in each case, as follows:



In the first place, companies organised abroad are qualified to perform isolated acts and to be on trial without need of prior registration or any further formalities.

In the second place, companies organised abroad may regularly perform activities consistent with their main business by setting up a branch, agency or any other type of permanent representation in Argentina. For this purpose, the foreign company must fulfil certain prerequisites, among them, the company must: (1) prove its existence pursuant to the laws of the country of origin; (2) set a legal domicile in Argentina; (3) comply with certain publications and registrations similar to those required by the GCL to local companies at the time of incorporation; (4) justify the decision to create such representation with the corresponding resolution; and lastly (5) appoint a representative who shall be in charge thereof.

Finally, companies organised abroad may opt to form or participate in local companies. For this purpose, the company must fulfil the following requirements first: (1) it must produce evidence that it has been incorporated in accordance with the laws of its country of origin; (2) it must register its by-laws and other qualifying documents; and (3) it must appoint its legal representatives in Argentina.

Furthermore, it is worth mentioning that the GCL upholds the phenomenon of companies formed in *fraudem legis*. In this regard, when a company organised abroad has its principal place of business, or its main purpose is to be accomplished in Argentina, then it shall be deemed to be a local company insofar as its incorporation, charter of amendments and supervision are concerned. Consequently, the company will only be recognised as a regular entity once it fulfils all the relevant requirements to register a local company under the GCL.

Regarding listed companies, capital markets regulations also apply the principle of equality before the law. However, all companies applying for a permit to make a public offering of securities in Argentina have to demonstrate that they have no restriction or legal prohibition to perform activities according to their by-laws within the country of organisation or registration. Consequently, offshore companies are excluded from participating in such a public offering.

### *iii. Applicable laws regarding offshore companies in the Autonomous City of Buenos Aires*

In the last 15 years, offshore companies have been subject to different regulatory provisions adopted by local registries in some jurisdictions of Argentina. For instance, in 2003, the Public Registry of the Autonomous City of Buenos Aires (the 'PR') initiated an integral regulatory reform upholding a standard that restricts the activities of offshore companies. Succinctly, the PR's regulations were to enhance the level of transparency, supervision and protection of stockholders and creditors through increased preventing measures (ex ante legal strategies). This reform also obeyed the international legal trend promoted by, among other international organisations, the Financial Action Task Force (FATF), also known as Groupe d'action financière ('GAFI'), and the Organisation for Economic Co-operation and Development (OECD) through the recommendations to fight against terrorism, money laundering and tax matters.

For a little bit of context today, it is worth mentioning that on 20 June 2018, MSCI announced the recategorisation of the MSCI Argentina Index from 'Frontier Markets' to 'Emerging Markets', status beginning in June 2019: Argentina's new categorisation, comes two years after the judicial settlement

of its long defaulted international debt (almost 14 years). Argentina aims now to be invited by OECD to join as a member country because it has been largely working towards that goal.

A. OFFSHORE VEHICLE PROVIDERS: GENERAL CONCEPT

According to General Resolution 7/15, offshore companies are those companies organised abroad, which pursuant to the laws of organisation, incorporation or registration thereof have imposed on them prohibitions or restrictions regarding all the business or main business transacted thereby, within the territory of application of such laws. Likewise, General Resolution 7/15 defines offshore jurisdictions as those jurisdictions – in the broad sense of the term, including independent or associated states, territories, domains, islands or any other territorial units or areas, whether independent or not – in which, pursuant to the applicable laws, prohibitions or restrictions are imposed upon all companies or a given type of company organised, incorporated or registered therein with regard to all business or the main business transacted thereby within the area of application of such laws.

Additionally, General Resolution 7/15 also refers to companies which, without being offshore per se, are companies organised in states, domains, territories, jurisdictions, associated states and specific tax regimes other than those considered jurisdictions that cooperate with Argentina for the purpose of fiscal transparency; or are organised in jurisdictions that do not cooperate in the fight against money laundering and transnational crime. Those are so-called de facto offshore companies, and they are also subject to specific regulations under General Resolution 7/15.

B. REGISTRATION OF OFFSHORE COMPANIES WITH THE PR

As mentioned above, one of the purposes of General Resolution 7/15 is to restrict and control the use of offshore companies organised abroad. Hence, a foreign company that requests to be registered with the PR (Autonomous City of Buenos Aires), whether for setting up a branch, agency or to participate in a local subsidiary, must comply with three additional and essential requirements to those general requirements described above and prescribed under the GCL. In this respect, the company must provide the PR with documentation, signed by its corporate officer, whose representation powers shall be attested to by a notary public, evidencing that: (1) the company is not subject to any prohibition or restriction to carry out all its business activities or its main activities at its place of organisation, incorporation or registration; (2) the company has, outside Argentina, one or more agencies, branches or representative offices in good standing and/or non-current fixed assets or rights to operate third-party property qualifying as non-current fixed assets and/or interests in other non-listed companies and/or customarily engages in investment transactions on stock exchanges or securities markets as provided for in its corporate purpose; and (3) the company must also identify its partners at the time of adopting the decision to apply for registration.

Consequently, the general principle is that the PR shall not register offshore companies originating from offshore jurisdictions. Offshore companies intending to perform activities for the attainment of their purpose and/or organise or hold an ownership interest in local companies, shall first comply in full with Argentine laws similarly to local companies.

Also, General Resolution 7/15 provides for specific exceptions to this principle (see below).

Regarding so-called de facto offshore companies (see definition above), the PR shall apply a restrictive criterion upon assessing the fulfilment of the following requirements: the company is actually engaged in significant business at its place of organisation, registration or incorporation and/or in other countries; and the identification of its partners. For such a purpose, the PR may request the company to provide, among other documents: (1) its most recent approved financial statements; (2) a description, in a document to be signed by the competent authority of the country of origin or a company officer – whose capacity and sufficient powers shall have to be duly evidenced – of the main transactions carried out during the fiscal year to which the financial statements refer or during the next preceding year if the periodicity of such statements were shorter, stating the transaction dates, parties, purposes and amounts; (3) documents evidencing title to non-current fixed assets or contracts conferring rights to operate non-current fixed assets, if the document mentioned in (2) above is deemed insufficient; and (4) background information about its partners' financial and tax condition.

For the sake of clarity, General Resolution 7/15 explains that upon assessing the business carried out by companies abroad for the purpose of determining whether it should be construed as the main business in comparison with the activities carried out by its office, branch or representation office in Argentina, the PR shall avoid focusing its review exclusively on the value of assets and/or volume of transactions, being entitled to ponder – based on the documentation to be submitted for registration purposes – other relevant factors such as: (1) the nature of the company's activities; (2) its integration in a group of internationally renowned companies characterised by the division and/or interrelationship of activities; (3) the extent of human resources involved; and (4) any other element that reasonably evidences the localisation and significance of the activities carried out abroad by the company.

#### C. MAINTENANCE OF THE REGULAR STATUS: ANNUAL REPORT

Once the company organised abroad has been registered with the PR, it must comply annually with a reporting duty, performed within 120 days as from the closing of its fiscal year. Basically, the company must provide evidence that it continues to carry out its main activities within the jurisdiction of organisation, registration or incorporation and/or in third countries. In addition, the company must provide evidence of its ownership structure, if there are variations therein.

Non-compliance with the reporting duty may constitute an indication that the company organised abroad is in fact a company *in fraudem legis*, and thus the PR may require the company to start a regularisation procedure to fulfil Argentine laws within a period which shall not exceed 180 days. Otherwise, the PR shall request in court the cancellation of the registration and the liquidation of assets, as applicable.

#### D. LEGAL EXCEPTION: VEHICLES FOR INVESTMENT MEANS

As already indicated, acknowledging the reality of international businesses and the proliferation of groups of companies worldwide, General Resolution 7/15 provides for an exemption appropriate to offshore companies when they apply for registration solely for the purpose of acting in Argentina as a vehicle or investment means of other companies that directly or

indirectly control them. In other words, a company acting as a mere investment vehicle of another company within the same group is exempt from submitting: (1) that it is not subject to prohibitions or legal restrictions to carry out, in its jurisdiction of incorporation, all of its activities or the most important of them; and (2) evidence regarding activities performed abroad. Instead, the controlling company must comply with these two requirements and the remaining ones described above. Furthermore, the vehicle company must submit: (1) a certificate issued by the controlling company declaring that the vehicle company is an investment instrument that it uses solely for that purpose; (2) a certificate issued by the vehicle company declaring that it is an investment instrument that the controlling company created solely for that purpose; (3) an organisational chart showing the controlling interest regarding the vehicle company; and (4) a certificate identifying the vehicle's shareholders. For avoidance of doubt, both the controlling company and its vehicle (whether offshore or not) must be registered with the PR, and accordingly, they must comply with the annual reporting duty as explained in the previous section.

#### *iv. Final words*

The applicable legal standards for companies in Argentina, for example, equal treatment to both foreign and local companies, plus the requisites for the incorporation of those legal entities (in this chapter, limited to offshore companies), on top of a federal system such as Argentina, urges foreign investors to learn about not only the legal requirements provided by the GCL but also the local law in the jurisdiction where the company intends to perform its main activities. Qualification of 'main activities' is always a matter of fact, and as such, it demands case-by-case analysis.

Finally, it is very important to highlight that to be in good standing under the GCL, the offshore company needs to be registered with a local register in the place where it will perform its main activities to do business throughout Argentina.

## **C. Development of ample/integrated capital markets and joint activities between Latin American countries**

### *i. Merger of stock exchanges: attempts versus realities*

A local example of a merger of capital markets that became effective is Bolsas y Mercados Argentinos SA ('ByMA'). ByMA was formed as a result of the association between Mercado de Valores SA ('Merval SA') and Bolsa de Comercio de Buenos Aires (BCBA). The main objective of ByMA is to create a local capital market that offers more quality, technology and options for its investors.

One of ByMA's main scopes is to apply new technologies so that investors can operate with shares and all types of financial assets in any part of the country and all over the world.

The ByMA was formally established in September 2016, and started operating on 23 May 2017. On the opening day, the President of ByMA, Ernesto Allaria, summarised the aims and ideas of the referred new stock exchange: 'Today BYMA makes available to all economic players the conversion of investment in production and services, and the transformation of savings into productive investment

to be used in financing projects, which contributes to the generation of employment and the growth of the national economy’.

The traded volume in the ByMA during 2017, measured in Argentinean Pesos was \$2,558bn, which represented an annual increase of 92.4 per cent. The same traded volume in ByMA for the same period of time (2017) measured in US dollars was US\$153,833m, which represented an annual increase of 71 per cent.

On the other hand, we can mention the Lima Stock Exchange (Bolsa de Valores de Lima (BVL)) and the Colombia Stock Exchange (Bolsa de Valores de Colombia (BVC)) as an attempt to integrate different capital markets. Both markets were in negotiations to merge both stock exchanges. The scope of the aforementioned merger was to create a new entity capable of affording globalised capital markets challenges, complementing the aims of the Latin American Integrated Market (LAIM – Mercado Integrado Latinoamericano (MILA)) and strengthening commercial ties between the two countries. In August 2011, the merger was suspended, and currently there are no signals to resume negotiations of the merger between both stock exchanges.

## *ii. MILA: current results and expectations*

MILA is the result of an agreement signed by the stock exchanges of Bogotá, Santiago and Lima, together with the central securities depositories (CSDs) Deceval, El Depósito Central de Valores (DCV) and Cavali.

On 30 May 2011, MILA began to operate. The main achievement of this integrated market is to enable investors to purchase and sell shares and equities from the three referred stock markets in their local currency and through the local broker.

The integration of the three stock markets is the result of three measures:

1. the use of technological tools;
2. the adaptation and standardisation of the regulations on trading in capital markets; and
3. the custody of securities in the three markets.

Thus, MILA is not a merger of markets or a global corporate integration. The three markets not only complement each other, but maintain their independence and regulatory autonomy.

### A. CURRENT RESULTS

To show the significance of this market, below we specify the traded volume in the MILA markets for certain months of 2017 and 2018 (Source: official page of MILA).

In September 2017, the total traded volume in the MILA markets was US\$14,379,873,099. In 2017, the total traded volume in the MILA markets was US\$130,434,022,420. In June 2018, the total traded volume in the MILA markets was US\$16,313,227,738. In 2018, the total traded volume in the MILA markets was US\$104,908,052,400.

## B. EXPECTATIONS

The expectations are to continue promoting the participant growth of financial businesses, integrate the stock markets of Chile, Colombia, Peru and Mexico (the ‘Member Countries’) and become the most attractive securities market in the region.

### *iii. Pacific alliances: governmental action and proposed treatment and agreements*

The Pacific Alliance is a regional integration initiative created on 28 April 2011. It is comprised of four countries: Mexico, Colombia, Peru and Chile.

The main objectives of the alliance are:

- free movement of goods and people among the Member Countries; and
- to create a more dynamic flow of trade among the members.

The official page of the Pacific Alliance states that ‘the purpose of the Pacific Alliance is the integration of Member Countries in order to move progressively closer to the free movement of goods, and generate a greater dynamism in the flow of trade between countries’.

In this sense, on 10 February 2014, the presidents of the member states of the Pacific Alliance subscribed to an agreement that consisted in the elimination of 92 per cent of the universal tariff (the remaining eight per cent will be eliminated progressively and according to what the parties agree).

There are also some topics that are currently being discussed, such as promoting multilateralism and rules-based global order, as well as open, transparent and inclusive free trade agreements (FTAs) in accordance with the World Trade Organization (WTO) to improve competitiveness and promote sustainable socio-economic development and social inclusion.

Nevertheless, the more ambitious aim that was proposed by the governments of the referred states is the free movement of people, goods and services among the countries within the alliance. It is a huge challenge, but realistic and possible, taking into account the achievements of the states concerning trade matters and integration.

### *iv. IPOs of multilatinas companies in Latin American capital markets*

Multilatinas companies are gaining power in the world business landscape. The most important multilatinas companies are in Mexico, Brazil and Chile. It is important to understand that these companies were local leader companies that, with management innovations and investment, have been able to expand all over the region.

Furthermore, LATAM Airlines could be named as the biggest hallmark case within the region. In August 2010, LAN Airlines and TAM Airlines, Chilean and Brazilian respectively, merged in order to create the largest airline in Latin America: LATAM Airlines.

Nevertheless, capitalisation is essential to accomplish such an objective. Some examples of initial public offerings (IPOs) of multilatinas companies in the Latin American markets show this fact.

In December 2017, Petrobras Distribuidora SA launched an IPO in the São Paulo Stock Exchange (BOVESPA), increasing its capital for an approximately amount of R\$5.024bn.

In July 2018, Mall Plaza (a subsidiary of Plaza SA), a Chilean shopping mall business, performed the biggest IPO in the history of the Chilean capital markets, resulting in an increase in the aforementioned stocks' corporation of approximately US\$520m.

However, the current main goal of multilatina companies is to attract investments and to be at the same level as traditional global companies.

It is worth highlighting the importance of encouraging multilatina companies in the region, but always keeping the balance of foreign and local investments that are not opposite but complementary.

## **D. Rendering of public services**

### *i. General framework*

During the 1990s, Argentina embarked on a privatisation programme as part of major economic reform.

Following the noticeable trend observed in the region, state-owned companies, which had been in charge of rendering telecommunications services, electricity and gas supply, oil production, water and sewerage services, airports and railways, among others, were declared subject to privatisation after more than five decades of state' monopoly.

This process was aimed at improving market efficiency and increasing private investment in order to enhance the quality of public utilities. The state changed its role from supplier to regulator. Foreign private investment in public utilities was also encouraged.

After Argentina's 2002 economic crisis, some public utilities returned to state control through different mechanisms – for example, nationalisations, expropriations and state intervention – such as water and sewerage services (at both national and local level), railways and the major oil producer.

In addition, public services rendered by private companies were greatly affected by the measures taken since Law 25,561 (the 'Emergency Law') was passed. As a result of this major political shift, nowadays, Argentina shares state-owned enterprises and private companies in the public utility sector.

### *ii. Governmental monopoly versus private initiative*

The Argentine Constitution remains silent as to whether public services should be rendered by the state or private companies. According to Article 42 of the Constitution, 'Legislation shall establish... regulations for national public utilities'.

This constitutional provision leaves the decision open to the legislator. Therefore, the legislative branch has discretion to decide which economic activity will be performed by the state or the private sector and, in the last case, which legal requirements should be complied with.

The Argentine Constitution also promotes the introduction of competition and market mechanisms wherever possible. Article 42 of the Argentine Constitution calls the public authorities to defend ‘competition against any kind of market distortions’, which naturally includes economic activities declared as public services.

### *iii. Privatisation general rules*

Argentina lacks a general framework of public utilities. Each industry has its own regulatory framework that covers its particular features.

The most important public utilities that are still rendered by private companies are power, natural gas and telecommunications.

#### A. POWER

The regulatory framework of the power sector (still privatised) was approved by Law 24,065 in 1992. Its main features are: (1) electricity transportation and distribution are considered ‘public services’ (ie, natural monopolies), while generation has been qualified as an ‘activity of general interest’ carried out within the framework of a competitive market; (2) there are cross-ownership restrictions for private companies between these economic activities; and (3) the creation of: (i) the Wholesale Energy Market Administrator (Compañía Administradora del Mercado Mayorista Eléctrico (‘CAMMESA’)), whose main functions involve coordinating dispatch operations, determining wholesale prices and administering the economic transactions; and (ii) an autonomous government agency (Ente Nacional Regulador de Electricidad (ENRE)), which regulates the market and controls public utilities.

In addition, a company willing to operate through the wholesale market is required to be previously authorised by CAMMESA.

Transportation and distribution services are rendered by concessionaires.

The transportation system is divided into: (1) high-voltage energy transportation that links electric power regions; and (2) trunk distribution electric power transportation, which is supplied within each region.

Tariffs charged by electricity transportation companies include: (1) a connection charge; (2) a transport capacity charge; and (3) a charge that rewards the energy transported. Revenues incoming from system expansion are regulated separately.

The main features of the distribution concession agreements are: (1) service supply quality standards are defined, and failure to meet these standards would entail penalties on the distributors and compensation to affected users; (2) a 95-year concession agreement for service supply was granted; and (3) tariffs were originally fixed on the basis of economic criteria (price caps, following predetermined procedures concerning their calculation and adjustment) until the Emergency Law entered into force in 2002.



## B. NATURAL GAS

Production of natural gas is governed by Hydrocarbons Law 17,319. As a result of the enactment of Law No 24,076 in 1992, transportation and distribution segments were vertically divided, and where applicable, horizontally split.

Transportation and distribution were characterised as a public utility due to their monopolistic nature.

The main features of the licence agreements for the distribution of natural gas are: (1) service supply quality standards were defined, and failure to meet these standards would entail penalties upon the distributors and compensation to affected users; (2) a 35-year licence agreement for service supply was granted with the possibility for the licensee to extend this term once for a ten-year period; at the end of the stated term, the majority stock of the corporation had to be offered for sale again; and (3) tariffs were fixed on the basis of economic criteria, until the Emergency Law entered into force in 2002.

## C. TELECOMMUNICATIONS

Telecommunications services were privatised in 1990, and two private companies were granted exclusivity rights until 1997.

In 2000, Decree No 764/00 entered into force and provided full deregulation for the telecommunication industry.

The main features of this sector are: (1) free competition; (2) transparent licensing rules (only one licence is sufficient to provide any telecommunications service); (3) a universal service regime (which tends to grant access to the services to the population at affordable prices); (4) national interconnection rules based on a non-discriminatory and transparent criteria; (5) the telecommunication spectrum is administrated exclusively by the state.

### *iv. Limitations and/or prohibitions to private parties in the rendering of public services*

As a general rule, there are no limitations or prohibitions to private parties for rendering public services in Argentina.

Unless the service is a legal or natural monopoly (eg, natural gas or electricity transportation and distribution), private companies are allowed, as a general principle, to render public services under state regulations.

## E. Real estate: limitations for private parties

### *i. Real estate: limitations for private parties*

As a general principle, Argentina's National Constitution grants the right to private property and states that expropriation due public use has to meet specific requirements to be admissible.

More specifically, real estate in Argentina is mainly regulated by the Argentine Civil and Commercial Code. The Argentine legal system regards ownership under the *numerus clausus* principle, therefore real estate rights are only those expressly recognised in the Civil and Commercial Code or special laws.

Real estate may also be affected by Border Security Zone regulations and by Law No 26,737 (Rural Lands Law) that impose restrictions on the ownership (and holding in the case of Border Security Zone) of rural properties by foreign citizens.

Properties are subject to provincial and local regulations related to the organisation and use of the properties, as well as regulations protecting historic places (which may also appear on a national level). Many jurisdictions also have laws on large commercial zones that regulate the use of large plots of land affecting mainly supermarkets, malls and department stores.

Environmental regulations may appear on a federal (national), provincial and municipal level. Federal laws provide the minimum standards, and provinces and municipalities establish specific standards and implement specific rules and obligations in order to comply with those standards. These regulations may result in limitations on the use of properties or in obligations for the owners, among other effects. Environmental laws apply to both urban and rural properties.

Finally, limitations may arise from agreements or conditions imposed by private parties in the manner of easements or conditions of sale, as the case may be, that are usually registered in the Real Estate Public Registry and/or arise of the title to the property. There may also be so-called 'administrative easements' that are imposed by local authorities usually for the use or provision of public services companies (energy, water, etc).

It is also worth mentioning that investment in the acquisition or development of real estate projects may need to give proper consideration in their structuring to other general regulations (exchange controls, taxes, etc) that may have specific rules for real estate investments.

## *ii. Urban properties*

Limitations for private parties in the use of urban properties are mainly those related to zoning, land use and construction codes. These regulations are enacted on a municipal level (following directives of general rules or standards issued at a provincial level).

Zoning regulations rule those matters related to a more general use given to the property (commercial, residential, etc). Land use refers to the specific activities developed in such properties (restaurant, shop, etc). Each city has its own urban planning code or a similar regulation including a zoning map of the city.

Construction codes include regulations on the construction itself and on the requirements to obtain authorisations. These regulations also have provisions on the square metres and heights that constructions may have on a given plot of land.

On a provincial level, many provinces have regulations regarding large plots of land when they are used for certain commercial purposes (clothing, food, construction materials, etc). These regulations establish particular requirements that owners or developers of these plots have to fulfil, as well as how the activities should be developed on those plots. In addition, there might be regulations for properties on riversides and coastlines that may result in limitations on the development and use of properties located in those areas.

In reference to Border Security Zone Law, although it is applicable both to rural and urban properties, there are many urban areas within the Security Zones where plots are excluded from the application of this law.

Limitations imposed by laws or regulations may also be imposed not as a general rule but to a particular property. In this sense a property may be subject to a so-called 'administrative easement', which is an easement imposed by regulations and usually related to the provision of public services (energy, water supply, etc). These limitations affect only a portion of the property and shall be mentioned in the title and the corresponding registry in the Real Estate Public Registry.

Other limitations may arise as a consequence of the regime to which a property is subject due to decisions in its development. An example of this type of limitation would be those resulting from the subdivision according to Propiedad Horizontal. For the subdivision under this regime the parties have to execute a deed in which, on the one hand, the units or dwellings are identified as well as the common areas and, on the other hand, includes rules on the use that those units may have (housing, offices, etc, always as permitted by zoning and construction codes), how the decisions are made, and how the owners of each unit shall contribute to the expenses of common areas and services, among other matters. In addition, the parties may issue internal rules of use that provide for more contingent matters, such as schedules and places for the disposal of garbage, procedure to use common salons, and so on.

Other limitations that may be a result of the decision or agreement by private parties are easements granted to neighbours in order, for example, to give right of way or conditions or charges imposed by the seller or donor of a property that a specific use is given to the property (eg, for a sports club). This type of limitation has to be included in the title and mentioned or referred in the Public Registry in order to have an effect on a subsequent buyer.

It is important to mention that transfer of real estate as well as the creation, change or extinction of real rights, has to be made through a public deed with the intervention of a notary that has the obligation to verify the status of the title, verify the existence of registered limitations and restrictions of the property, and obtain certificates from the authorities in regards to the property.

In reference to the exploitation of an urban property, leases are subject to regulations by the Commercial and Civil Code. According to these regulations, the minimum length of a lease is two years, regardless of the purpose, and the maximum length is 20 years for housing leases and 50 years for commercial leases.

Tenants may also terminate lease agreements provided that six months of the lease agreement have passed, and subject to previous notification. In case tenants terminate the lease (after six months and with previous notice), they shall pay the equivalent of one and a half times the monthly price of the lease if the termination is during the first year and one month if the termination is after the first year.

Another restriction that may affect leases, especially in an inflationary scenario, is the prohibition of indexation or adjustment of prices, according to which it will require the inclusion of a mechanism in the contract to maintain the price of the lease with respect to market prices throughout the term of the contract.

### *iii. Rural properties*

Limitations for rural properties resulting from local (municipal or departmental) or provincial levels would probably be mainly related to the possibility of subdividing the plot or to particular rules for specific activities or uses of rural land, as well as environmental laws, water regimes, and so on.

In addition, there are legal obligations to give right of way to properties that have no access to routes or other ways. If applicable, this obligation will most probably be regulated in an easement between the parties, with an agreement on how the right of way is granted. Other easements that are common to find in rural properties are those related to the use of water or access to water sources, in addition to or in accordance with those provisions of the water regime laws of the jurisdiction that rules the use of rivers, lakes and water reserves in each jurisdiction.

All rural properties within Border Security Zones are reached by regulations that impose restrictions on foreign entities and individuals regarding acquiring properties in the so-called Border Security Zones that are determined in these regulations.

In case a foreign individual or company intends to acquire real estate located within these zones, special authorisation granted by the National Commission of Security Zones is required in order to complete the acquisition. It is important to mention that local companies controlled by foreign shareholders are deemed to be foreign companies for this regime and thus, any acquisition of properties by these companies shall require authorisation. In the same sense, if a foreign individual or company intends to acquire a local company that owns properties in the Security Zones, the acquisition will have effects due to these regulations.

The term to obtain this authorisation is around three months, but in some cases, it takes longer.

Moreover, in December 2011, Law No 26,737 (the 'Rural Lands Law') was enacted, which provides for the Regime for the Protection of National Domain on Ownership and Possession of Rural Lands. In February 2012, the Rural Lands Law was completed by Regulatory Decree No 274/2012, and in June 2016, Decree No 274/2012 was modified by Decree No 820/2016.

The Rural Lands Law intends to regulate the limits to ownership and possession of rural land by foreign persons – individuals or companies – irrespective of its use or the production to which it might be dedicated.

The Rural Lands Law considers the following as 'foreign persons':

1. foreign individuals;
2. entities controlled by foreign individuals or entities;
3. trusts that have more than 25 per cent of foreign (individuals or entities) beneficiaries;
4. joint ventures (JVs) in which foreign persons participate in a percentage that is over that authorised by the Rural Lands Law;
5. foreign public entities; and
6. simple associations controlled by foreign individuals or entities.

The Rural Lands Law establishes the following limits to ownership or possession by foreign persons:

1. as a general limit, a maximum of 15 per cent of ownership or possession by foreign persons in the Argentine territory; this 15 per cent is calculated over the province, municipality or administrative body territories (eg, departments) in which the property is located;
2. persons of a single nationality may not own or possess more than 30 per cent of the limit mentioned in (1);
3. each proprietor shall have a limit of 1,000 hectares or the equivalent according to the location;
4. prohibition of ownership or possession of land next to permanent and relevant bodies of water; and
5. if the property is inside a Security Zone and does not fit the exceptions from Decree No 15385/44 (modified by Law No 23,554), it was also required previously that the transfer must be authorised by the Border Security National Commission.

The Rural Lands Law also creates a National Registry of Rural Lands that will have a registry of land with foreign proprietors, and that may impose sanctions in the case of non-compliance with the Rural Lands Law.

#### *iv. Expropriation events*

As a general principle, the right to private property is granted by the Federal Constitution, which only admits expropriation for cause of public utility if:

- Congress has declared the public interest; and
- prior and due compensation has been paid to the owner.

On a provincial level, the respective constitutions include similar provisions.

Both on a federal and provincial level, there are laws that regulate the process of declaration of public interest or utility and the procedure to determine the compensation of the owner. According to this procedure, if the parties (ie, the Executive Branch and the owner) do not reach an agreement regarding the amount of the compensation the determinations shall be made by the courts, taking into consideration the constitutional guaranty and applicable law.





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