

# DOING BUSINESS IN ARGENTINA AND BRAZIL: LEGAL ASPECTS OF FINANCIAL REGULATIONS<sup>1</sup>

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## I. FOREWORD.

The phenomenon of the lack of financial development in Latin America might be attributed to several causes. While some of them are rooted in macroeconomic and political nature, some others should be attributed to inadequate regulation and enforcement, tax treatment and tax administration, foreign exchange controls, barriers to trade in financial services (mainly in restrictions to capital flows), among many others. This guide is purported to address this last set of causes with focus on the jurisdictions of Argentina and Brazil to be regarded as a reference.

In this summary below are several topics regarding the regulatory and legal framework in connection with financial issues and capital markets in Argentina and Brazil. The financial aspects reviewed include subjects such as: (i) regulatory matters, such as: exchange rate regimes, capital controls, capital market regulation and other legal aspects of the financial sector; (ii) tax treatment of financial instruments; and, (iii) anti-money laundering and financing of terrorism laws.

Financial markets develop in complex regulated structures at the national level; therefore the task of integrating these markets involves some degree of convergence of rules and regulations of the countries taking part on the integration.

Brazil and specially Argentina, as we will review in the following pages, seem quite far from such a process.

As for this guide, the following section will address several issues related to foreign exchange, capital mobility and the regulation of markets. Section III will be devoted to tax issues, especially focusing on the taxation of financial instruments, while section IV will review anti-money laundering issues.

## II. FOREIGN EXCHANGE, CAPITAL MOBILITY AND MARKET REGULATION.

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(i) INTRODUCTION.

Issues addressed in this section refer to main characteristics in the foreign exchange framework between Argentina and Brazil, focusing on the foreign currency and foreign capital mobility policies. Other topics reviewed cover several aspects of financial market regulation in both countries.

In Brazil and Argentina the degree of financial liberalization changed after the financial crisis in each country, in 1999 and 2001 respectively. While in Argentina the financial liberalization was profound before the crisis, capital controls were introduced later in this century. In Brazil, the process was reverse.

Following the 2001 economic and financial crisis, Argentina implemented strict control on foreign exchange transactions that restricted acquisition of foreign currency by Argentine and non-Argentine residents and on the inflows and outflows of capital from Argentina.

In Argentina, the foreign exchange regulations are controlled by the Central Bank of Argentina/*Banco Central de la República Argentina* (“BCRA”), while in Brazil, the National Monetary Council/*Conselho Monetário Nacional* (“CMN”) and the Central Bank of Brazil/*Banco Central do Brasil* (“BCB”) are responsible of formulating the general guidelines of the foreign exchange policy, enforcement and control.

(ii) EXCHANGE REGULATION.

*Exchange Rate Regimes.*

*Argentina.*

From April 1, 1991 until the end of 2001, Law No. 23,928 (the “Convertibility Law”) established a regime under which the BCRA was obliged to sell U.S. dollars at a fixed rate of one Peso per U.S. dollar. On January 6, 2002, the Argentine Congress enacted Law No. 25,561 (the “Public Emergency Law”), formally ending the regime of the Convertibility Law, abandoning over ten years of U.S. dollar-Peso parity as well as eliminating the requirement that the BCRA’s reserves in gold, foreign currency and foreign currency denominated debt be at all times equivalent to 100% of the monetary base. The Public Emergency Law, which has been extended until December 31, 2011 by Law No. 26,563<sup>5</sup>, grants the Executive Branch of the Argentine government the power to set the exchange rate between the Peso and foreign currencies and to issue regulations related to the foreign exchange market. Following a brief period during which the Argentine government established a temporary dual exchange rate system pursuant to the Public Emergency Law, the Peso has been allowed to float against other currencies since February 2002. The shortage of U.S. dollars and heightened demand caused the Peso to further devalue significantly. As a result, the BCRA has intervened on several occasions since that date by

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<sup>5</sup> In Argentina, it has become standard practice for Congress to declare special emergencies and to enact laws to continuously extend such declarations.

selling U.S. dollars in order to lower the exchange rate. The BCRA's ability to support the Peso by selling U.S. dollars, however, is restricted by its U.S. dollar reserves.

Through Decree 260/02, the Argentine Executive Branch established (i) a single and free-floating foreign exchange market/*Mercado Único Libre de Cambio* (hereinafter, "MULC" as per the initials in Spanish) through which all foreign exchange transactions in foreign currency must be conducted, and (ii) that foreign exchange transactions in foreign currency must be conducted at the foreign exchange rate to be freely agreed upon among contracting parties, subject to the requirements and regulations imposed by the Central Bank.

Argentina has a managed floating regime due to the frequent intervention of the BCRA in the foreign exchange market. Foreign exchange transactions must be carried out through authorized entities<sup>6</sup>, e.g., banks, exchange agencies, financial companies, which are subject to specific regulations.

It is noteworthy that as of October 2011, the Argentine Government tightened foreign exchange controls to stem capital flight from the country. Banks and exchange houses are required to verify savings and income information on individuals seeking to buy dollars in addition to investors purchasing companies or real estate will be required to deposit the full amount of the sale in the country and individuals purchasing more than \$250,000 per calendar year will need to demonstrate the origin of the funds used.

The new measures target the unregulated foreign exchange market, which investors and companies use to skirt currency limits. The Government has additionally issued a decree requiring energy and mining companies to keep all of their export revenue in the country.

### *Brazil.*

Brazil has historically imposed strict controls over cross border currency transactions through a foreign exchange policy. Changes were introduced in early 2005 in an attempt to make Brazil's foreign exchange regulations more flexible and simpler for Brazilian foreign companies and individuals alike with the overall goal to facilitate cross border transactions.

Until 2005, there were two official foreign exchange markets in Brazil, both of which were subject to BCB regulation and operated at floating exchange rates. However, following the trend of liberalization of exchange market, the BCB issued new foreign exchange provisions, effective March 2005 (Resolução 3,265/05 and Circular 3,280/05). Basically,

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<sup>6</sup> Inflows and outflows of currencies from the Argentine exchange market must be registered with the BCRA by the Authorized "FX Trader" involved in the transaction. In addition, all exchange transactions require an exchange contract to be executed with the relevant FX Trader in which the parties must disclose the purpose of the underlying transaction. Copies of the exchange contracts must be made available for the BCRA, which is able to analyze them and to request information from the FX Traders and the customers in order to verify whether the funds were in fact used for the purpose disclosed there under. Exchange contracts are considered sworn statements. The underlying principle of exchange regulations is that no transaction may be made if it is not expressly authorized by those regulations, and that all transactions must be supported by relevant documentation which must allow the FX Trader involved in the transaction to verify whether exchange regulations are being complied with. Transactions not complying with exchange regulations are reached by the Criminal Exchange Law No. 19,539, as amended.

the new legislation (RMCCI - *Regulamento do Mercado de Câmbio e Capitais Internacionais*) unified the foreign exchange market in the country, integrating the regulations in connection with the free exchange rate market (*Mercado de Câmbio de Taxas Livres*), floating exchange rate market (*Mercado de Câmbio de Taxas Flutuantes*) and the transactions known as International Transfer of *Reais*.

The RMCCI introduced flexibility in terms of foreign exchange transactions, reducing the burdensome requirements to implement certain operations. In this context, legal entities and individuals may purchase foreign currency without direct or prior BCB approval. According to the new RMCCI, cross-border obligations contracted in local currency (*Reais*) between a resident and a non-resident party may be liquidated in foreign currency; under the condition that appropriate documentation is presented. Such a transaction was not allowed or authorized by the previous regulations.

Brazil's foreign exchange regime is a “dirty floating” one, since the BCB eventually intervenes in the foreign exchange market in periods of capital flow volatility and more recently its intervention fulfills a policy of managing its international reserves. Transactions in the foreign exchange markets are accomplished by banks, brokers and tourist agencies allowed to operate in foreign exchange.

It is noteworthy that frequent interventions by both BCRA and BCB have delimited the US dollar exchange rates volatility in both countries, notably in Argentina since 2004.

#### *Foreign Trade Payments and Trade of Foreign Currency.*

Argentina enforces repatriation requirements for exports as exchange controls have been reinstated the obligation to repatriate and sell in the FX Market foreign currency proceeds from the export of goods and services within the terms provided in the specific regulations. Exporters of goods and services are required to settle foreign exchange receipts from exports in the MULC within a term that depends on products exported, usually a 60–360 days period depending on the sector (certain activities or products benefit from exemptions granted through specific regulations and/or government contracts).

In Brazil, until March 2008, 70% of the proceeds from the export of goods and services were subject to surrender requirements within 365 days of the shipment date, but since then this request no longer applies, due to RMCCI regulation.

Additionally, there are financing requirements for imports in both Argentina and Brazil. Although in Argentina advance payment for import of goods is allowed, proof must be provided that the goods have entered within a certain period of time. In Brazil, external financing of imports for periods exceeding a year must be registered in the BCB's electronic system, the Financial Operations Registry. The BCB must be informed of prepayments of import financing at least 30 days in advance.

In Argentina, exports of foreign currency (or goods import payments) exceeding US\$ 10,000 are subject to BCRA's approval. Sales of foreign currency to non-residents that exceed US\$5,000 per month require the BCRA's consent.

In Brazil, transfers on trade related payments for invisible transactions (such as royalty payments, technical services, management fees, personal home remittance, etc.) are specifically regulated. The National Council on Private Insurance sets regulations on insurance and reinsurance transactions in foreign currency. For investment related payments, non-resident investments must be registered electronically at the BCB.

### *Capital Transactions.*

#### *Argentina.*

In Argentina, capital transactions were liberalized during the nineties, but nevertheless, after the 2001-2002 crisis restrictions were introduced. Since then, foreign currency transactions and transfers to and from the local market must be transacted through the MULC. For capital inflows, 30% of the total amount is retained in a 365 day-interest free deposit with local financial institutions for the following operations<sup>7</sup>: (i) financial and non-financial private sector financial liabilities (namely, loans from foreign residents to the private sector), except flows directed to finance public and private primary offering of stock or bonds listed and traded in self-regulated markets (such as inflows for primary offerings listed in MERVAL), foreign trade transactions or foreign direct investment; (ii) primary issues of shares of resident companies that are neither listed nor traded in regulated markets (mainly in the form of issues of new shares in local closed corporations); (iii) specific non-resident portfolio investments; (iv) external assets sales by private sector residents, for the surplus exceeding the equivalent to US\$2,000,000 per calendar month (such as the inflows of proceeds from the sales of assets located abroad by local companies); and (v) inflows to the local foreign exchange market allocated to subscribe primary issues of securities (such as funds transferred for the issuance of new shares in public companies), debt instruments (such as corporate debt destined to de acquisition of capital goods), and certain share certificates issued by a trust fund trustee.

Regarding the formation of off-shore assets by residents without a mandatory specific subsequent application, the following are permitted: Purchases of foreign currency, subject to a monthly limit of US\$2,000,000 in the aggregate of the entities authorized to deal in foreign exchange, by trusts set up with contributions by the Argentine public sector, and by resident individuals and legal entities organized in Argentina, excluding the entities authorized to operate in foreign exchange, for the aggregate of the following items: real estate investments abroad, loans granted to non-residents, contributions pertaining to direct investments abroad by residents, portfolio investments abroad by individuals, other investments abroad by residents, portfolio investments abroad by corporations, purchases of foreign currency bills to be held in Argentina, purchases of traveler's checks and donations. The following requirements apply: (i) the purchased funds are not applied to purchases in the secondary market of securities issued by residents or ADRs (or similar securities), or issued by non-residents and traded in Argentina; (ii) when purchases in the calendar month exceed US\$5,000 and the amount acquired throughout the calendar year exceeds the equivalent of US\$250,000, the entity involved must verify that the amounts acquired are

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<sup>7</sup> Pursuant Decree 616/2005, and other applicable regulations.  
Information as of DECEMBER, 2011.

consistent with the assets as reported by the client to the tax authorities, or, if applicable, the existence of subsequent events that evidence the sale of assets generated by the funds applied to the acquisition of foreign currency, and/or that the client has an income during the calendar year that justifies the existence of the funds used; and (iii) a statement by the client that he or she have no overdue and unpaid debts to creditors abroad for principal and interest services of any type of debts. This requirement does not apply to the purchases of bills and traveler checks for amounts less than the equivalent of US\$10,000 per calendar month, in the aggregate of the entities authorized to operate with foreign exchange.

### *Brazil.*

The financial liberalization in Brazil has been gradually implemented for the last decade and a half. Currently, non-resident capital transactions must be registered electronically with the BCB. A 2.38% tax applies to remittances due to obligations of credit card companies related to their clients' purchases and a 6% exchange tax to inflows associated to external loans with a minimum maturity of up to 90 days (this last rate upped from 5.38% as of March 2011). Most recently, in October 2009, a 2% tax on portfolio capital inflows was put into effect, affecting money entering the country to invest in equities and fixed income instruments, while direct foreign investment in the productive economy should not be affected by the aforementioned tax. Regarding these tax issues, please refer to the tax section of this memo.

### *Capital Flows and Capital Markets Instruments.*

In Argentina and Brazil, specific regulations must be observed in the securities market.

### *Argentina.*

In Argentina: (i) a 30% unremunerated deposit requirement of 365 days affects the purchase of shares and bonds in the local market by non-residents<sup>8</sup>; (ii) controls apply to shares and bonds purchased abroad by residents; and, (iii) foreign exchange proceeds of bonds issued abroad by residents should be surrendered within 365 days and a minimum maturity of 1 year is requested<sup>9</sup> (ADRs might be affected by this regulation). On the other hand, primary issues of debt securities that are publicly offered and listed on self-regulated markets are excluded from the minimum maturity requirement.

While non-residents may deposit their Argentine securities in Euroclear, an exception applies to new series of BCRA's securities. Euroclear has been used by some investors to elude the capital controls in Argentina. The investor sells the Argentine bonds operating in

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<sup>8</sup> Decree 616/2005 subjects funds entering into Argentina to a 30% "withholding" that must be transferred to registered non-transferable interest free deposits with Argentinean banking entities during a 365-day term (i.e., 30% of the funds entering into Argentina must be automatically withheld by the Authorized FX Trader and allocated to this mandatory deposit). Pending such term, funds held in deposit cannot be disposed by any means nor used as collateral for any transaction.

<sup>9</sup> Pursuant to Decree 616/2005, as regulated by the various Communications issued by the Central Bank, funds entering into Argentina may only be transferred abroad after a 365-day term counted from the date the funds were converted into Pesos has elapsed. Accordingly, financings must typically have a minimum duration of one year.

Euroclear instead of CANAL (Securities Depository/*Caja de Valores*), receiving US dollars from abroad. The opposite can be done to enter funds. Alternatively, instead of bonds, the operation can be made with the purchase or sale of Argentine shares that are quoted abroad through American Depositary Receipts or ADR (Argentine Share Certificate in US dollars). This mechanism is commonly known in the local financial market as a cash settlement “*contado con liquidación*”, or more informal, “*contado con liqui*”.

#### *Brazil.*

In Brazil: (i) restrictions apply in the purchase of shares by non-residents in the domestic market in some economic activities; (ii) non-residents may issue locally traded bonds only through private placements; and (iii) specific regulations apply to the transfer to other jurisdictions of funds for the purchase of shares and bonds by residents. Besides, as stated above, since mid-October 2009, the Brazilian government imposed a 2% tax on foreign purchases of fixed-income securities and stocks in an attempt to slow the appreciation of Brazil's currency.

Brazilian bank accounts owned by nonresidents used to be utilized to remit local currency abroad. This was especially useful when the remittances in foreign currency were not allowed due to foreign exchange restrictions. This was known as “international transfer of Reais” or “CC-5 transactions” (due to the fact that they used to be regulated by a BCB rule named *Carta-circular* n°5, already revoked). In the past, the non-resident company could then open its own “CC-5” account (a non-resident Brazilian bank account in local currency). Payments in Reais received in this account were then exchanged abroad for another currency. However, over the time, this type of accounts was heavily used also for remittance abroad of illegal funds and, therefore, because of the associated bureaucracy and close BCB scrutiny, it became very difficult in practice to open new accounts.

It should be noted that the international transfer of Reais is permitted and legal, provided the funds also have a legal origin. Nevertheless, the RMCCI prohibited the use of “CC-5” accounts of third parties, i.e., the companies cannot use the “CC-5” account of private banks anymore, if they do not have their own accounts.

#### *Derivatives.*

#### *Argentina.*

As previously mentioned, since year 2002 the BCRA has adopted foreign exchange controls and issued a significant amount of regulations which materially affect the inflow and outflow of funds, and cross border financial transactions in general (most types of indebtedness, portfolio investment, etc.). These controls particularly affect the execution of derivatives transactions, whether in the form of forwards, non-deliverable forwards (“NDFs”), options or swaps (in aggregate, the “Derivatives”), and the cash flows arising therefrom (although some exceptions exist).

In this regard, and as a general rule, prior authorization from the BCRA is required for either entering into Derivatives transactions or transferring foreign currency (inflow or

outflow) pursuant thereto. This approval is required even when the transaction does not entail a foreign currency exchange.

On the contrary, according to Section 1 of Regulation “A” 4,805 of the BCRA (as amended and supplemented), Derivatives transactions entered into by legal institutions (whether local residents or not) which are settled in Argentina through compensation or payment of differences in Argentine Pesos, are not only permitted (therefore not subject to prior consent by the BCRA) but also exempted from all requirements imposed by the FX Regulations (as defined below).

Based on the foregoing, Derivatives could be classified in two categories:

- “*Local Derivatives*”, not subject to restrictions nor to prior BCRA authorization (Section 1 of Regulation “A” 4,805); and
- “*Foreign Derivatives*”, subject to existing foreign exchange restrictions affecting financial transactions and to prior BCRA authorization (except for those listed under Section 2 of Regulation “A” 4,805, as we shall discuss below).

In order to qualify as “Local Derivatives”, Derivatives must (a) be settled in the manner explained above (i.e., in Argentina through compensation or payment of differences in Argentine Pesos), (b) be governed by Argentine law, and (c) not entail any present or future payment of a local resident with transference (outflow) of funds to offshore accounts. Please note that the nationality of the person/entity is not relevant for the qualification of the Derivative as local, nor is his or her place of residence. However, all inflows made by non-residents for the settlement of Local Derivatives, shall be subject to FX Restrictions (as defined below).

As opposed to this, a “Foreign Derivative” would be defined as a transaction entered by a resident entity with a foreign party in which it is likely that an inflow and/or an outflow of foreign currency shall occur.

As mentioned above, in order for Derivatives transactions to qualify as Local Derivatives they must be governed by Argentine law. BCRA Regulation “A” 4,285 does not, however, expressly require the submission of the parties to such Local Derivatives to Argentine courts.

When asked, BCRA officers have unofficially interpreted that the requirement of Argentine law as governing law for Local Derivatives also implies submission to Argentine courts. In truth, foreign exchange regulations hold no requirements regarding applicable jurisdiction and therefore do not ban the parties from agreeing to submit to the jurisdiction of foreign courts. This is, however, also a matter of interpretation as a possible alternative could be to submit to arbitration procedures.

Due to the existence of these FX Restrictions and the reluctance of the BCRA to grant exceptions, market practice is to structure Local Derivatives.

Section 2 of BCRA Regulation “A” 4,805 exempts some Foreign Derivatives from the prior consent of the BCRA, which are as follows:

1. Options entered by local financial institutions with the purpose of hedging risks related to certain variable income deposits permitted by the BCRA;
2. Derivatives transactions between foreign currencies which are entered (i) by local financial institutions with the purpose of hedging their foreign assets denominated in foreign currencies and their holdings of gold, (ii) by local residents with the purpose of hedging their obligations under duly registered foreign indebtedness, provided that such Derivative transactions shall in no case exceed the amounts due under such registered foreign indebtedness, (iii) by local importers for hedging the balance of advance payments made for pending shipments of assets imported from Argentina, and (iv) by local exporters for hedging risks on shipments made and pending of collection;
3. Derivatives transactions entered by local residents with the purpose of hedging interest rate payments under duly registered foreign indebtedness, provided that such Derivative transactions shall in no case exceed the amounts due under such registered foreign indebtedness;
4. Derivatives transactions entered into with the purpose of hedging prices of commodities which are entered into: (i) by local importers and exporters with the purpose of hedging their own foreign trade transactions, (ii) by local financial institutions with non-residents where such Derivative transactions are mirroring transactions made with local clients, provided that the following requirements are met: (a) the transaction is made to cover risks assumed with local clients through the sale of options, forwards or futures and that the date of hedging matches both transactions, (b) there exist no local derivatives market where these transactions can be made, (c) the hedging entered into with the non-resident has the same maturity date as the local hedge, which in no case shall exceed three years, and which are settled by compensation, with no delivery of the underlying assets, (d) the transactions made with local clients hedge price variations of products which are raw materials of directly affect the cost of their raw materials used for the products or services produced by the local client, (e) hedge transactions with local clients cover (both with respect to amounts and terms) their risks of price variations for the respective raw materials, (f) the local financial institution can reasonably certify that the agreements entered with local clients do not exceed the costs risks of the local client during the term of the hedge transactions, considering also other Derivative transactions made by the local client.

These transactions are exempted of the Mandatory Deposit, but subject to the remaining FX Restrictions. In addition, the local counterparty under these Derivative transactions shall undertake to transfer into Argentina any amount resulting in its favor within five (5) business days as from settlement.

Also these transactions can only be entered: (i) through regulated international markets, or (ii) with foreign banks meeting the requirements set forth under Communication “A” 4,560 (i.e., banks that are: (a) branch or agency of Argentine public banks, (b) foreign banks totally or partially owned by foreign governments, (c), development multilateral banks, (d) foreign banks which have been authorized by the BCRA to establish branches in Argentina or to acquire shares in local financial institutions, (e) other foreign banks, provided that their head offices are located in a Basle Committee for Bank Supervision member country and that, additionally, have at least an “A” credit rating granted by a credit rating agency registered with the BCRA, or (iii) with financial institutions which are authorized to undertake this type of transactions, provided they are controlled by banks meeting the requirements described in (ii).

All other Foreign Derivative transactions are subject to prior consent of the BCRA.

As mentioned above, BCRA Regulation “A” 4,285 governs the execution of Derivatives transactions. Although it does not expressly refer to Argentine collateral on Local Derivatives, it does refer to Derivatives transactions executed with non-residents, establishing that such transactions, including the creation of collateral, is, as a general rule, subject to prior BCRA authorization and only exempted from such authorization on certain specific cases described in Section 2 of the aforementioned Regulation “A” 4,285.

Although a matter of interpretation, it is reasonable to believe that, unless included in the list of exemptions, the creation of collateral by non-residents is subject to FX Restrictions. Therefore, for any such collateral not to require prior authorization from the BCRA, it should be structured as a Local Derivative.

A merely literal interpretation of the BCRA regulations would lead to the belief that execution of collateral in U.S. Dollars and governed by foreign law could be permitted, but enforcement of any such collateral would result in a violation of applicable foreign exchange regulations, since it would result in payment to the local resident in U.S. Dollars instead of Pesos, a scenario that is expressly forbidden by the aforementioned foreign exchange rules.

Although the potential non-enforceability of collateral is, in practice, only a problem for the guaranteed party (i.e., the local resident counterparty), it is possible (though unlikely) that the signatory acting on behalf of the non-resident entity in the creation of U.S. Dollar-denominated collateral governed by foreign law could be prosecuted by the BCRA for participating in a transaction that is forbidden by applicable foreign exchange regulations.

### *Brazil.*

In Brazil no unremunerated reserve requirement applies, but banks are allowed to operate within statutory limits of the foreign exchange position and the transactions should be settled in no more than 720 or 750 days, if it is, respectively, an interbank or an export transaction (for other transactions the period is 360 days). Non-residents have access to derivative markets if registered locally.

## *Foreign Direct Investment.*

### *Argentina.*

Generally, no controls apply on Foreign Direct Investment (“FDI”) in Argentina for outward FDI. Note that as of October 2011, the Government issued a decree requiring energy and mining companies to keep all of their export revenue in the country.

### *Brazil.*

In Brazil, the transfer of funds made by institutions abroad, which are allowed to operate by the BCB, as well as other funds must comply with specific regulations related to prudential regulations. According to the RMCCI, Brazilian entities or individuals are allowed to make foreign direct investments abroad without prior approval from BCB on quantitative limitations. Under the previous regime investments abroad higher than US\$ 5 million were subject to BCB’s prior approval. All foreign exchange transactions must be contracted with an authorized agent (normally a private financial institution authorized by BCB to operate in the exchange market). Most foreign exchange transactions do not depend on the preapproval from BCB. In this sense, the private financial institutions may implement the remittances provided appropriate supporting documentation and proof of applicable tax payment is presented.

Proper registration of foreign direct investments with BCB in the *RDE-IED* electronic system is paramount to enable future repatriation of capital and remittance of dividends, interest on equity and capital gains. Lack of proper registration may generate the so-called *tainted capital* (not registered foreign capital).

### *Argentina.*

Both countries have limitations on inward FDI in few economic activities. In Argentina, these activities include shipbuilding, fishing, border-area real estate, nuclear power generation, air transportation and uranium mining. In Brazil, they are fishing, real property, nuclear energy, aviation and aerospace, health services, media, mail and telegraph. Restrictions are subject to the rules of international reciprocity, mainly through Foreign Investment Treaties (namely, through the operation of Most Favored Nation or *MFN* clauses).

The legal framework regarding capital markets in both countries is applied to local as well as foreign companies.

In Argentina, liberalization of the banking system to foreign institutions was promoted by the financial reform of 1977. Through Decree 1,853 of 1993, foreign companies may invest in the country without registration or prior government approval as resident investors and face the same tax liabilities as local firms. Under the Argentine Securities and Exchange Commission/*Comisión Nacional de Valores* (CNV) regulations, foreign and local issuers meet the same requirements to make a public offering of securities: Both must have a permanent representative office and domicile in Argentina. Non-resident issuers must

clarify whether the securities are being offered in their own country and list the information requirements to which they are submitted. Issuers of public offerings of securities domestically and abroad should display the same information to the CNV as requested by the entities authorizing the public offering and offshore listing.

#### *Brazil.*

In Brazil, in 2000 new rules considerably liberalized equities and put foreign investors on the same level as Brazilians. Still, foreign investment in the banking sector is approved on a case by case basis. The Constitution of 1988 implicitly forbids the access of foreign capital to the banking system since the related regulatory norm has not yet been voted on. In the meantime, through Article 52 of the Temporary Constitutional *Orders/Disposiciones Constitucionales Transitorias*, foreign capital has access to the local market under certain circumstances (international agreements, reciprocity principle, national interest) and with the consent of the president of the Republic. In 1996, the insurance sector was opened to foreign investment and, in 2007; reinsurance was opened after many years of government-owned monopoly.

#### (iii) STOCK MARKET REGULATION.

##### *Stock Market Regulations. Transactional System Regulation.*

#### *Argentina.*

The Buenos Aires Stock Exchange started operating since 1854 and handles approximately 95% of all equity trading in Argentina. Bonds listed on the Buenos Aires Stock Exchange may also be listed on the *Mercado Abierto Electrónico*, the Argentine over-the-counter market, or MAE. As a result of an agreement between the Buenos Aires Stock Exchange and the MAE, equity securities are traded exclusively on the Buenos Aires Stock Exchange and debt securities (both public and private) are traded on both the MAE and the Buenos Aires Stock Exchange.

In addition, through an agreement with the Buenos Aires Stock Exchange, all of the securities listed on the Buenos Aires Stock Exchange are authorized to be listed and subsequently traded on the exchanges located in Córdoba, Rosario, Mendoza, La Plata and Santa Fe. As a result, many transactions that originate from these exchanges relate to companies listed on the Buenos Aires Stock Exchange and these trades are subsequently settled in Buenos Aires.

The Buenos Aires Stock Market, *Mercado de Valores de Buenos Aires S.A.*, or Merval, is affiliated with the Buenos Aires Stock Exchange, and is the largest stock market in Argentina. The Merval is a corporation whose 133 shareholder members are the only individuals and entities authorized to trade, either as principal or as agent, in the securities listed on the Buenos Aires Stock Exchange. Trading on the Buenos Aires Stock Exchange is conducted by continuous open outcry, or the traditional auction system, from 11:00 a.m. to 5:00 p.m. each trading business day of the year. Trading on the Buenos Aires Stock

Exchange is also conducted through a *Sistema Integrado de Negociación Asistida por Computación* or SINAC. SINAC is a computer trading system that permits trading in debt securities and equity securities. SINAC is accessed by brokers directly from workstations located at their offices. Currently, all transactions relating to listed negotiable obligations and listed government securities can be effected through SINAC. In addition, a substantial over-the-counter market exists for private trading in listed debt securities. These trades are reported on the MAE. Settlement of transactions conducted on Merval is mostly effected three business days after the trade date without any adjustment for inflation.

### *Regulation of the Argentine Securities Market*

The CNV is a governmental entity that oversees the regulation of the Argentine securities markets and is responsible for authorizing public offerings of securities and supervising brokers, public companies, mutual funds and clearinghouses. Public offerings and the trading of futures and options are also under the jurisdiction of the CNV. The Argentine securities markets are governed generally by Law No. 17,811, as amended, which created the CNV and regulates securities exchanges, stockbrokers, market operations and public offerings of securities.

Most debt and equity securities traded on the exchanges and the over-the-counter market must, unless otherwise instructed by the shareholders, be deposited by shareholders with *Caja de Valores S.A.* (“Caja de Valores”), which is a corporation owned by the Buenos Aires Stock Exchange, the Merval and certain provincial exchanges. Caja de Valores is the central securities depository of Argentina, which provides central depository facilities for securities, acts as a clearinghouse for securities trading and acts as a transfer and paying agent. Caja de Valores also handles settlement of securities transactions carried out by the Buenos Aires Stock Exchange and operates the computerized exchange information system.

Although in the first half of the 1990s, changes to the legal framework were introduced permitting the issuance and trading of new financial products in the Argentine capital markets, including commercial paper, new types of corporate bonds and futures and options, there is a relatively low level of regulation of the market for Argentine securities and investors’ activities in that market, and enforcement of existing regulatory provisions has been extremely limited. Furthermore, there may be less publicly available information about Argentine companies than is regularly published by or about companies in the United States and certain other countries. However, the CNV has taken steps to strengthen disclosure and regulatory standards for the Argentine securities market, including the issuance of regulations prohibiting insider trading and requiring insiders to report on their ownership of securities, with associated penalties for noncompliance.

In order to improve Argentine securities market regulation, the Argentine government issued Decree No. 677/01, which provides certain guidelines and provisions relating to capital markets transparency and best practices. Decree No. 677/01 took effect on June 1, 2001. The decree applies to individuals and entities that participate in the public offering of securities, as well as to stock exchanges. Among its key provisions, the decree broadens the definition of “security”; governs the treatment of negotiable securities; obligates companies

whose shares are publicly listed to form audit committees comprised of three or more members of the board of directors, the majority of whom must be independent under CNV regulations; authorizes market stabilization transactions under certain circumstances; governs insider trading, market manipulation and securities fraud; and regulates private transactions and acquisitions of voting shares, including controlling stakes in public companies.

In order to offer securities to the public in Argentina, an issuer must meet certain requirements established by the CNV regarding assets, operating history, management and other matters, and only securities for which an application for a public offering has been approved by the CNV may be listed on the corresponding stock exchange. This approval does not imply any kind of certification of assurance related to the merits of the quality of the securities or the solvency of the issuer. Issuers of listed securities are required to file unaudited quarterly financial statements and audited annual financial statements, as well as various other periodic reports, with the CNV and the corresponding stock exchange.

CNV rules also provide that any individual or entity that, either directly or indirectly, purchases or sells securities, alters its direct or indirect participation in the share capital of a publicly traded company, converts debt-securities into stock or exercises purchase or sale options of any such securities must immediately report such purchase, sale, alteration, conversion or exercise to the CNV and publish such report in the Buenos Aires Stock Exchange daily bulletin, provided the securities involved represent at least 5% of the voting rights of the publicly-traded company. Any additional 5% variation in such voting rights must be reported to the CNV and published in the aforementioned daily bulletin as well.

*Brazil.*

*Trading on the Brazilian Stock Exchange—Securities, Commodities & Futures Exchange.*

The BM&F Bovespa—Securities, Commodities & Futures Exchange, or the "São Paulo Stock Exchange," is a public company which resulted from the merger, in 2008, of *Bolsa de Mercadorias e Futuros* (BM&F, the Brazilian commodities and futures exchange), *Bolsa de Valores de São Paulo* (Bovespa, the São Paulo stock exchange), and *Companhia Brasileira de Liquidação e Custódia* (CBLC, a clearinghouse). Before the merger, BM&F and Bovespa, which were non-profit entities owned by their member brokerage firms until 2007, conducted their initial public offerings (IPOs) and became public companies. The integration process among such companies was fully completed in November 2008.

Trading on the São Paulo Stock Exchange is limited to member brokerage firms and a limited number of authorized non-members. The São Paulo Stock Exchange currently has open outcry trading sessions, from 10:00 a.m. to 5:00 p.m. or from 11:00 a.m. to 6:00 p.m. during Brazilian summer time. An innovation designed to increase investor access to BOVESPA was the creation of the After-Market, which allows trading on an electronic system, outside the normal hours of the trading floor. Trading in the so-called After-Market takes place through the automated quotation system of the São Paulo Stock Exchange, from 5:45 p.m. to 7:00 p.m. or from 6:45 p.m. to 7:45 p.m. during Brazilian summer time. Only shares that were traded during the regular trading session of the day may be traded in the

After-Market of the same day. Trades are made by entering orders in the *Mega Bolsa* electronic trading system, created and operated by the São Paulo Stock Exchange.

The *Mega Bolsa* system has on-line updating for all consultations regarding shares traded on BOVESPA and allows the user to operate, consult, update statistics, work with electronic graphs directly connected to market information and receive news of the same. BOVESPA has been a pioneer in the introduction of trade innovations, such as the *Home Broker System*, a modern relationship channel between investors and intermediaries. This system offers on-line trading: via Internet, the investors may place their orders to be carried out on the *Mega Bolsa* system.

Settlement of transactions conducted on the São Paulo Stock Exchange is effected three business days after the trade date without any adjustment for inflation. Delivery of and payment for shares is made through the facilities of the Brazilian Clearing and Depository Corporation (Companhia Brasileira de Liquidação e Custódia), or "CBLIC," which is the São Paulo Stock Exchange's securities clearing system. The seller is ordinarily required to deliver the shares to the exchange on the second business day following the trade date.

While all of the outstanding shares of a listed company may trade on the São Paulo Stock Exchange, in most cases fewer than half of the listed shares are actually available for trading by the public. The remaining shares are often held by a single or small group of controlling persons or by governmental entities.

Trading on the São Paulo Stock Exchange by a holder not deemed to be domiciled in Brazil for Brazilian tax and regulatory purposes, or a non-Brazilian holder, is subject to certain limitations under Brazilian foreign investment regulations. With limited exceptions, non-Brazilian holders may trade on the São Paulo Stock Exchange only in accordance with the requirements of Resolution No. 2,689 of January 26, 2000 of the CMN Resolution No. 2,689 requiring securities held by non-Brazilian holders to be maintained in the custody of, or in deposit accounts with, financial institutions that are authorized by the BCB and the *Comissao de Valores Mobiliarios*/Brazilian Securities Commission (CVM). In addition, Resolution No. 2,689 requires non-Brazilian holders to restrict their securities trading to transactions on the São Paulo Stock Exchange or organized over-the-counter markets.

With limited exceptions, non-Brazilian holders may not transfer the ownership of investments made under Resolution No. 2,689 to other non-Brazilian holders through private transactions.

#### *BDRs.*

Since 1992, Brazilian companies have been authorized to launch Depository Receipts (DR) programs, some of them having established a considerable presence within the markets their shares are traded.

In 1996, the National Monetary Council (CMN) established the regulations, and the CVM and the BCB rendered the *Brazilian Depository Receipt* (BDR) operational. BDRs are

certificates that represent stocks issued by publicly traded Corporations or similar, based overseas, and issued by a depository institution in Brazil. The rules for trading these certificates are established in CMN Resolution 2.763, of August 9th, 2000, in CVM Instructions 331 and 332, of April 4th, 2000 and BCB Regulation 2,996, of August 9th, 2000.

The issue of BDRs should be carried out by Brazilian institutions denominated depository institutions (or issuing companies) which are companies authorized to operate by the Central Bank and licensed by the CVM to issue BDRs. The issue of the certificates has underlying securities held in custody in their country of origin, by institutions denominated custodian institutions, which must be authorized by a body equivalent to the CVM, to maintain the securities to which the BDRs refer in custody.

### III. TAXATION STRUCTURE FOR FINANCIAL INSTRUMENTS.

The purpose of this section is to briefly describe the current taxation regime applied to financial instruments both in Argentina and Brazil. The analysis will focus on national taxes borne by holders of financial instruments in both countries.

Notwithstanding the foregoing, it is noteworthy that Argentina charges state taxes on capital income and gains, namely the turnover tax (or *Impuesto a los Ingresos Brutos*) which is imposed by each province and rates may vary from state to state. Neither Argentina nor Brazil applies municipal (local) taxes on capital income.

#### (i) STRUCTURAL DIFFERENCES.

In general, taxes and rates vary across the countries. For instance, Argentina and Brazil tax income at different rates, however there are some main differences in both tax regimes that should be addressed preliminarily, as follows:

- a) *Asset Tax*: in Argentina there is an "assets tax" on individuals that is independent of income tax and must be paid on some assets that an individual, resident or not, owns at December 31 of each year. Besides, not all assets are subject to the aforementioned tax. As an example, holdings of government bonds shall not be included in the determination of the assets tax base while holdings of private bonds (namely, corporate debt) are subject to this tax unless they were purchased before March 1995, therefore, this tax introduces a distortion by driving demand for government bonds up and that of private bonds down.
  - a. *Bank Debits and Credits Tax*: Law No. 25,413 (published in the Official Gazette of Argentina on March 26th, 2001), as amended, establishes, with certain exceptions, a tax levied on debits and credits on checking accounts maintained at financial institutions located in Argentina and on other transactions that are used as a substitute for the use of checking accounts.

The general tax rate is 0.6% for each debit and credit (although in certain cases an increased rate of 1.2% and a reduced rate of 0.075% may apply).

- b. Pursuant to Decree No. 534/2004 (published in the Official Gazette of Argentina on May 3, 2004), 34.0% of the tax paid on credits levied at the 0.6% tax rate and 17.0% of the tax paid on transactions levied at the 1.2% tax rate will be considered as a payment on account of income taxes, taxes on presumed minimum income and tax on cooperatives capital.
- c. The exceeding amount will not be subject to compensation with other taxes or transfer in favor of third parties, being able to be transferred, to its exhaustion, to other fiscal periods of the above-mentioned taxes.

b) *Exemptions and lower rates:* there are some exemptions or lower rates that apply to some financial instruments interest and issuance costs regarding general taxes the countries impose, such as Value Added Tax (“VAT”). In Argentina, for instance, interest on bank loans is subject to a lower VAT rate, while placing and commission costs of publicly traded financial trusts or mutual funds are exempt from VAT.

c) *Special Taxes:* there are also special taxes that apply to certain transactions in some countries, such as Day Trade operations tax and the Tax On Financial Operations in Brazil that may affect the return of financial instruments, thereby constituting another asymmetry.

(ii) DESCRIPTION OF TAX REGIMES.

*Income Tax.*

Argentina and Brazil tax resident individuals or companies on their worldwide income and non-resident individuals and companies on their domestic income. Capital gains or interest accrued on domestic financial instruments generally receive the same treatment as income tax, even though some financial instruments receive a special treatment in some countries. The rates vary and they are described later in this section. For each country, marginal tax rates on interest and capital gains are shown in the Table below, according to the holder of the financial instrument: resident individuals, resident companies and non-residents (both individuals and companies generally receive the same treatment).

There are asymmetries that can be inferred from the table. Taxation of capital gains and interest on financial instruments vary among countries and type of holder. Each country has its own exemptions that vary among instruments. Notwithstanding the general income tax structure described herein, please bear in mind that taxes borne by different financial instruments vary in each country by type of holder. In case of corporations several exceptions apply, since each both countries analyzed signed double taxation treaties with other countries, therefore, depending on the country of residence of the individual or company, the tax rates may be different when the financial instrument is contemplated by a treaty.

GENERAL INCOME TAX STRUCTURE IN ARGENTINA AND BRAZIL

<i>Country</i>	<i>Type of Individual</i>	<i>Tax Rate</i>	<i>Comments</i>
Argentina	Resident individuals	0-35	Rates vary with income. There are exemptions such as interests and/or capital gains on fixed-interest time deposits, bonds issued by federal, state or municipal governments, publicly traded mutual funds and financial trusts, and privately issued bonds acquired before 03/24/1995. Time deposits containing an inflation adjustment clause pay taxes on the real interest rate component.
	Resident Corporations	35	Dividend distributions from companies owned are excluded.
	Non-residents	35	Dividend distributions from companies owned are excluded for non-resident companies. Interest and capital gains on bonds issued by federal state or municipal governments are excluded from income tax base. Bilateral tax treaties may apply.
Brazil	Resident individuals	0-22.5	Rates vary according with the maturity of the financial instrument. Interest accrued on fixed income instruments is taxed at the rate of 15%. Equity interest is taxed at the rate of 15%. Capital gains derived from the sale of capital assets are subject to a flat rate of 15%. Individuals investing in stocks of investment funds that invest in stocks are subject to a 15% tax on the profits of the investment.
	Resident Corporations	15-22.5	General income tax rate is 15% plus an additional 10% on yearly earnings greater than R\$ 240.000. There is an additional 9% "Social Contribution Tax". Corporations are required to pay a 15% tax on interest paid or credited to stockholders, partners or owners as a return on equity. Corporations investing in stocks or in investment funds that invest in stocks are subject to a 15% rate tax on the profits of the investment.
	Non-residents	25	Bilateral tax treaties may apply. Dividend distributions are exempt from income tax.

### *Income Tax and Negotiable Obligations in Argentina.*

Interest payments on the notes (including original issue discount, if any) will be exempt from Argentine income tax; *provided* that the notes are issued in accordance with the Negotiable Obligations Law No. 23,576, and qualify for tax exempt treatment under Article 36 of such law<sup>10</sup>.

<sup>10</sup> Under Article 36, interest on the notes shall be exempt if the following conditions (the "Article 36 Conditions") are satisfied:

- (a) notes must be placed through a public offering authorized by the CNV in compliance with Joint Resolution 470-1,738/2004;
- (b) the proceeds of the issue of such notes must be, pursuant to corporate resolutions authorizing the offering, applied either to (i) investments in tangible assets in Argentina,
- (ii) working capital in Argentina, (iii) refinancing of debt, whether at its original maturity or prior to such maturity, (iv) capital contributions to controlled or affiliated corporations; *provided* that such corporations use the proceeds of such contributions for the purposes set forth in (i), (ii) or (iii) above; and

### *Assets Tax.*

Argentina holds an asset tax on corporations. Moreover, resident individuals in Argentina are also required to pay assets tax on their total taxable assets, and rates vary from 0% to 1.25%, depending on the instrument and the level of wealth, that is, depending on the amount of total taxable assets at December 31 each year, and therefore most financial instruments (including currency holdings and checking account balances) are taxable assets and constitute the tax base for assets tax.

Non-resident individuals and companies are also required to pay assets tax, as well on assets located in Argentina. However, for most financial instruments the applicable tax rate for non-resident individuals or companies is 1.25%. There are several exceptions to this tax that are based, basically, on the type of financial instrument that may be exempt. For instance, savings and time deposits in any currency in Argentine banks are excluded from the taxable assets of resident individuals. Government bonds can also be excluded for resident individuals as well as for non-residents.

Individuals domiciled and undivided estates located in Argentina or abroad must include securities in order to determine their tax liability for the Personal Assets Tax. The tax is applicable on the market value of the securities (or the acquisition costs plus accrued interest in the case of unlisted securities) at December 31 of each calendar year.

Individuals domiciled and undivided estates located in Argentina are exempt from this tax to the extent the amount of their taxable assets held at December 31 of each year, determined by the rules of Personal Assets Tax, do not exceed an aggregate amount of AR\$ 305,000. When the aggregate amount of the taxable assets exceeds AR\$ 305,000 the total amount of the assets are taxable at the following rates:

<i>Total amount of taxable assets</i>	<i>Applicable rates</i>
More than AR\$ 305,000 to AR\$ 750,000	0.50%
More than AR\$ 750,000 to AR\$ 2,000,000	0.75%

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(c) evidence must be provided to the CNV, in the time and manner prescribed by regulations, that the proceeds of the issue have been used for the purposes described in section (b).

If Article 36 Conditions are fully complied with, resident and non-resident individuals and foreign entities without a permanent establishment in Argentina are not subject to taxation on capital gains derived from the sale or other disposition of the notes.

However, if Article 36 Conditions were not met, Decree No. 2,284/1991 establishes that foreign holders without a permanent establishment in Argentina are not subject to taxation on capital gains derived from the sale or other form of disposition of the notes.

As a result of the Decree No. 1,076/1992, amended by Decree No. 1,157/1992, ratified by Law No. 24,307, Argentine Entities are subject to the payment of income tax at a rate of 35% on capital gains derived from the sale or other disposition of the notes as prescribed by Argentine tax regulations.

More than AR\$ 2,000,000 to AR\$ 5,000,000	1.00%
More than AR\$ 5,000,000	1.25%

In respect of individuals domiciled or undivided estates located abroad, Personal Assets Tax must be paid only on their assets located in Argentina (such as local securities) at the rate of 1.25%, but Personal Assets Tax is not required to be paid if the amount of such tax is equal or less than AR\$ 255.75.

The personal asset tax liability is paid by the individual or legal entity domiciled in Argentina that has the custody of or keeps in deposits, holds, manages, maintains, or has the joint ownership or the right of possession, use, enjoyment or disposal of the assets owned by the non-resident individuals or undivided estates to which we refer as “Substitute Taxpayer.” Although securities owned by individuals domiciled or undivided estates located outside Argentina who do not have a Substitute Taxpayer would be technically subject to the Personal Assets Tax, according to the provisions of Decree No. 127/1996, a procedure for the collection of such tax has not been established in respect of such securities.

Under certain circumstances, assets held by companies or other entities domiciled or incorporated abroad usually referred to as “Foreign Legal Entities” are presumed to be owned by individuals or undivided estates domiciled or incorporated in Argentina and, consequently, are subject to the Personal Assets Tax at an aggregate rate of 2.5%. Such presumption, which cannot be reversed applies to any Foreign Legal Entity which (i) pursuant to its bylaws or to applicable regulatory framework has its principal investing activity outside the jurisdiction of its incorporation or (ii) cannot perform certain transactions in the jurisdiction of its incorporation expressly indicated in its bylaws or in the applicable regulatory framework to which we refer as an “Offshore Taxable Entity,” provided that such presumption would not apply to any Foreign Legal Entity which is (a) an insurance company, (b) an open-end mutual fund, (c) a pension fund or (d) a bank or financial entity; whose headquarters are incorporated or domiciled in a country that has adopted the banking supervisory standards established by the Basle Convention to which we refer as an “Exempt Off-shore Entity.”

Notwithstanding, Decree No. 812/1996, dated July 24, 1996, establishes that the legal presumption discussed above shall not apply to shares and debt-related private securities whose public offering has been authorized by the CNV and which are tradable on the stock exchanges located in Argentina or abroad.

Besides, pursuant to Resolution 2,151 adopted on October 31, 2006 by the Argentine Tax Authority (*Administración Federal de Ingresos Públicos*, or AFIP), if the capital stock of a Foreign Legal Entity is evidenced by equity securities that qualify as registered securities under the laws of its jurisdiction of incorporation, such company would not be presumed to be holding securities on behalf of an Argentine individual or undivided estate even if it would otherwise qualify as an Offshore Taxable Entity.

If an Off-Shore Taxable Entity which is the holder of the new securities is subject to the personal asset tax, the applicable rate shall be 2.5% and any local individual, company or entity that has the use, enjoyment, disposal, deposit, holding, custody, management or guardianship of such new securities shall be responsible for the payment as a Substitute Taxpayer. Pursuant to the applicable law, the Substitute Taxpayer must pay the amount and also is authorized to retrieve the amount paid, without restrictions. When a person is exempted from the payment of personal asset tax for any reason (other than the fact that the new securities are authorized by the CNV for public offering in Argentina and are listed in one or more Argentine or foreign self-regulated markets), the Substitute Taxpayer is responsible for the tax payment unless it obtains an appropriate exemptive certificate. Such certificate will not be needed if the new securities are authorized by the CNV for public offering in Argentina and are listed in one or more Argentine or foreign self-regulated markets.

In order to ensure that this legal presumption will not apply and, it is necessary to keep in records a duly certified copy of the CNV resolution authorizing the public offering of the shares or debt-related private securities and evidence verifying that such certificate or authorization was effective as of December 31 of the year in which the tax liability occurred, as required by Resolution No. 4,203 of the Argentine Tax Authority.

#### *Minimum Presumed Income Tax.*

The tax on minimum presumed income/ *Ganancia Mínima Presunta* (the “PMIT”) is levied on the potential income from the ownership of certain income-generating assets. Corporations domiciled in Argentina, among others, are subject to the tax at the rate of 1.0% (0.20% in the case of local financial entities, leasing entities or insurance entities) applicable over the total value of assets above an aggregate amount of AR\$ 200,000. The tax basis shall be the fair market value if the notes are listed in a self-regulated securities exchange market, and the adjusted acquisition cost if they are not. This tax will only be owed if the income tax determined for any fiscal year does not equal or exceed the amount owed under the PMIT. In such case, only the difference between the PMIT determined for such fiscal year and the income tax determined for the same fiscal year shall be paid. Any PMIT paid will be applied as a credit toward income tax owed in the immediately following ten fiscal years.

Individuals, undivided estates, non-permanent residents in Argentina and Foreign Legal Entities -that do not have a permanent establishment in Argentina- are outside of the scope of this tax (Individuals and undivided estates are subject to the PMIT for their ownership of rural real estate).

#### *Tax on Financial Transactions.*

As stated above, in Argentina credits and debits on bank accounts are subject to taxation on every credit and every debit on a checking account, an amount equivalent to 0.6% is debited (therefore, totaling 1.2%). Also, when a check is deposited in a savings account, a tax of 1.2% of the amount of the check is automatically debited from the savings account (but not taxed when the savings account is debited). However, 34% of the tax paid on bank

Information as of DECEMBER, 2011.

credits in checking accounts can be taken as an advance on income tax payment (for individuals or corporations in the general regime), with 17% of the credit *tax* on checks deposited in savings account for individuals in the general regime, while the remaining 66% is deductible from income tax return.

Brazil used to charge a bank debit tax of 0.38% on every bank debit made on a bank account. This tax expired on December 31, 2007.

However, there is another *tax* that affects some financial transactions, the so-called "Tax on Financial Transactions" (IOF). It is important to mention that the Brazilian government may modify the IOF tax rate at any time without the intervention of the Congress (a maximum rate is in force, and the government may change the rate within a specific gap). Most common situations involving the application of IOF are related to exchange and credit transactions<sup>11</sup>.

#### *Turnover Tax.*

Turnover tax is a local tax; therefore, the rules of the relevant provincial jurisdiction should be considered. Any investors regularly engaged in activities, or presumed to be engaged in activities, in any jurisdiction where they receive revenues from interest arising from securities, or from their sale or conveyance, could be subject to the turnover tax at rates that vary according to the specific laws of each Argentine province, unless an exemption applies.

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<sup>11</sup> IOF rates varies according to the taxable event:

- (i) IOF on Credit Transactions: In 2008, the tax rate of the IOF/Credit tax levied on certain Credit Transactions carried out by individuals was increased from 0.0041% to 0.0082% (daily). Basically, the IOF is levied on loan transactions of any type, including loan facilities and purchases made on credit (except credit card transactions). An additional rate of 0.38% was imposed on a number of other credit transactions.
- (ii) IOF Tax on Foreign Exchange (FX) Transactions: This tax is imposed on the conversion of *Reais* into foreign currency or vice versa. The IOF/FX tax rate formerly applied to almost all foreign currency exchange transactions was zero. As of January 2008, however, different IOF/FX tax rates apply to specific exchange transactions.
- (iii) IOF on Financial Assets: IOF on capital gains on fixed income assets (funds and bonds), applicable only on operations up to 30 days, are subject to a 1% tax.

### *Stamp and Transfer Taxes.*

Stamp and Transfer Taxes are local taxes that are generally levied on the instrumentation of onerous acts executed within a certain territorial jurisdiction or outside a certain territorial jurisdiction but with effects in such jurisdiction; therefore, the rules of the relevant provincial jurisdiction should be considered for the issuance of instruments which implement onerous transactions (including issuance, subscription, placement and transfer) involving the notes, executed in those jurisdictions, or with effects in those jurisdictions. Notwithstanding the foregoing, for the City of Buenos Aires, any instrument related to the issuance of securities which public offering is authorized by CNV is exempt from this tax.

### *VAT.*

In Argentina, interest on bank loans are subject to a lower VAT rate -10.5%-, while issuance costs of publicly traded mutual funds and financial trusts are exempt from VAT. Since the general VAT rate is 21%, this constitutes an important asymmetry.

Interest on government bonds, bank deposits and financial instruments with public offering such as private bonds or financial trusts are exempt from VAT in Argentina, while, say, privately placed corporate bonds are subject to the full VAT rate on interest.

In Brazil, the VAT is a state tax called Tax on the Circulation of Goods and Services (ICMS), but it is noteworthy that -in the region- Argentina is the only country that imposes a VAT on financial income.

### *Day Trade Operations Tax.*

Brazil charges a tax on day trade operations at 1% of the gain made on a day trade operation. This tax does not exist in Argentina.

### *Tax Treaties.*

Argentina holds tax treaties with Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom. Recently, Argentina has unilaterally enacted a reform of the tax treaty with Austria, making returns on Austrian bonds taxable to Argentineans.

Brazil holds tax treaties with the following Countries: Argentina, Austria, Belgium, Canada, Chile, China, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, Norway, Philippines, Portugal, South Africa, Spain and Sweden.

## IV. ANTI-MONEY LAUNDERING AND FINANCING OF TERRORISM LAWS.

*Argentina.*

In Argentina, the concept of money laundering is generally used to denote transactions intended to introduce criminal proceeds into the institutional system and thus to transform profits from illegal activities into assets of a seemingly legitimate origin.

On April 13, 2000, the Argentine Congress passed Law No. 25,246 (as amended, including by Laws No. 26,087, 26,119 and 26,268 (the “Anti-Money Laundering Law”)), which defines money laundering as a type of crime. In addition, the law, which supersedes several sections of the Argentine criminal code established severe penalties for anyone participating in any such criminal activity and created the UIF, the agency responsible for the analysis, treatment and transmission of information, with the aim of preventing money laundering resulting from different crimes.

Below is a summary of certain provisions regarding the anti-money laundering regime set forth by the Anti-Money Laundering Law, Decree No. 290/07 and ancillary regulations issued by the UIF and other regulatory entities.

The Argentine Criminal Code (Article 278 thereof as amended by the Anti-Money Laundering Law) defines money laundering as a crime committed by any person who exchanges, transfers, manages, sells, levies or uses in any other way money or other assets obtained through a crime in which he or she did not take part, with the possible consequence that the original assets or the substitute thereof appear to come from a lawful source, provided that their value exceeds AR\$ 50,000, whether such amount results from one or more connected transactions. The penalties established are the following: (i) imprisonment from two (2) to ten (10) years and fines from two (2) to ten (10) times the amount of the transaction; (ii) the minimum sanction shall be five (5) years of imprisonment when the person carries out the act on a regular basis or as a member of an association or gang organized with the aim of continuously committing acts of a similar nature; and (iii) if the value of the assets did not exceed AR\$ 50,000, the person should be penalized, when appropriate, according to the rules set forth in article 277 of the Criminal Code. The Argentine Criminal Code also punishes any person who receives money or other assets from a criminal source with the purpose of applying them to a transaction, making them appear to be from a lawful source. This person shall be punished according to the provisions set forth in article 277 from the Argentine Criminal Code (imprisonment from six (6) months to three (3) years, which, in some cases, can be increased).

According to the Anti-Money Laundering Law, the following persons, among others, are subject to report to the UIF: (1) financial institutions and insurance companies; (2) exchange agencies and individuals or legal entities authorized by the Argentine Central Bank to operate in the purchase and sale of foreign currency in the form of cash or checks drawn in foreign currency or by means of credit or debit cards or in the transfer of funds within Argentina or abroad; (3) broker-dealers, companies managing investment funds, over-the-counter market agents, and intermediaries engaged in the purchase, lease, or borrowing of securities; (4) armored transportation services companies and companies or concessionaires rendering postal services that carry out foreign currency transfers or

remittance of different types of currency or notes; (5) governmental organizations, such as the Central Bank, the Argentine Tax Authority, the National Superintendency of Insurance (*Superintendencia de Seguros de la Nación*), the CNV and the IGJ (*Inspección General de Justicia*, namely the office of corporations); and (6) professionals in economics sciences and notaries public<sup>12</sup>.

Argentine financial institutions must comply with all applicable anti-money laundering regulations as provided by Decree No. 290/07, Decree No. 1,936/2010 and by the Central Bank and the UIF; in particular with Resolution No. 37/2011 of the UIF, dated February 8, 2011, which regulates Section 21 paragraphs (a) and (b) of the Anti-Money Laundering Law that provides for the gathering of information regarding suspicious operations and its report to the authorities, as well as with the anti-money laundering regime set forth by the BCRA (the most recent restatement of which dates as of December 23, 2010, by means of Communication “A” 5,162) and, when acting as placement agents in public offerings of securities, applicable CNV regulations. Although Resolution No. 37/2011 sets forth that the BCRA must amend its existing anti-money laundering regulations to comply with the terms of the resolution, to date, the BCRA has not yet issued such regulations.

Through Resolution 2/2002, the UIF provided a list of examples of potential suspicious activities that financial entities must consider in connection with their investments, which includes the following transactions: (a) investments in securities for a disproportionate value, considering the business of the investor; (b) deposits or back-to-back loans in jurisdictions known as tax havens; (c) requests from customers for asset management services when the origin of the funds is not certain or clear or is not consistent with the type of business of the investor; (d) unusual and significant transfers of asset accounts in custody; (e) frequent use from non-regular customers of investment accounts for special purposes; and (f) frequent transactions with securities for the purchase and sale within the same day of equal amounts and volumes, when they seem unusual and inadequate with the business of the investor.

BCRA regulations require Argentine banks to take certain minimum precautions to prevent money laundering. Each institution must have an anti-money laundering committee, formed by a member of the board of directors, the officer responsible for anti-money laundering matters (*oficial de cumplimiento*) and an upper-level officer for financial

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<sup>12</sup> Individuals and entities subject to the Anti-Money Laundering Law must comply with the following duties: (a) obtain documentation from their customers that irrefutably evidences their identity, legal status, domicile, and other data stipulated in each case, (b) report any suspicious event or transaction (which according to the customary practices of the field involved, as well as to the experience and competence of the parties who have the duty to inform, are unusual, have no economic or legal justification or are unusually or unjustifiably complex, whether performed on a single occasion or repeatedly (regardless its amount), and (c) abstain from disclosing to customers or third parties any act performed in compliance with the Anti-Money Laundering Law. Within the framework of analysis of a suspicious transaction report, the aforementioned individuals and entities cannot refrain from disclosing to the UIF any information required from it by claiming that such information is subject to bank, stock market or professional secret, or legal or contractual confidentiality agreements. The AFIP shall only disclose the secret information when the suspicious transaction report has been made by such entity and refers to the individuals or entities involved directly with the reported transaction. In all other cases the UIF shall request that the federal judge holding authority in a criminal matter disclose the secret information.

intermediation and/or foreign exchange matters (i.e., with sufficient experience and knowledge on such matters and decision-making powers).

The BCRA itself must also comply with anti-money laundering regulations set forth by the UIF, including reporting suspicious or unusual transactions. In particular, the BCRA must comply with recently enacted Resolution 12/2011, which, among other things, lists a few examples of what constitute “suspicious or unusual transactions”<sup>13</sup>.

In addition, CNV Rules provide that Argentine intermediaries of any kind, including placement agents in the issuance of securities, may only perform transactions made or ordered by persons incorporated, domiciled or residing in jurisdictions or territories not deemed “tax haven jurisdictions” as set forth in Argentine Decree No. 1,344/98. Also, in case the transaction is made or ordered by persons incorporated, domiciled or residing in jurisdictions or territories not deemed “tax haven jurisdictions”, but that are intermediaries registered with or in a self-regulated market subject to the control of an authority similar to the Argentine CNV, such transaction may only be performed in case the CNV has entered into a memorandum of understanding, cooperation and exchange of information with such foreign regulatory authority.

Furthermore, pursuant to General Resolution 547/2009 of the CNV the opening and maintenance of client accounts by the following persons must comply with the UIF rules, although some of them were previously included in Section 20, Sub-section 4 and 5 of the Anti-Money Laundering Law: (i) companies involved in securities intermediation and registered in futures and options markets; (ii) companies managing investment funds, placements agents or any other kind of investment funds intermediary; (iii) individuals or legal entities that directly or indirectly hold or are related to trust accounts, trustors and trustees by virtue of trust agreements; and (iv) individuals or legal entities acting as placement agents for primary issuances of securities.

By means of Resolution 33/2011, the UIF provided a list of examples of potential suspicious activities directly related with the stock exchange market, which include the following transactions: (a) investments in securities for a disproportionate value, considering the market conditions and the prices negotiated therein; (b) investments in securities for a disproportionate value, considering the business and the financial situation of the investor; and (c) investments in securities for high par value amounts, which are unusual with the amounts dealt with regularity by the type of investor.

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<sup>13</sup> The listed transactions must be particularly scrutinized by the BCRA and include, among others: any transaction involving financial institutions; regular transactions involving securities (especially daily purchases and sales of the same amount of securities); capital contributions into financial institutions that have been paid-in in cash or means other than bank transfers; capital contributions by companies incorporated or domiciled in jurisdictions that do not allow for information relating to family relations of its shareholders, board members or members of its supervisory committee; deposits or withdrawals in cash for unusual amounts by entities or individuals that normally use checks or other financial instruments and/or whose declared business does not correspond with the types or amount of the transaction; subsequent cash deposits for small amounts that, in the aggregate, add up to a relevant sum; a single client holding numerous accounts that, in the aggregate, hold relevant sums inconsistent with such client’s declared business or usual kind of transaction; accounts with several authorized signatories that hold no apparent relation (in particular when domiciled in a tax haven and acting off-shore) and clients that unexpectedly cancel loans.

Finally, Resolution 33/2011 must be observed by broker-dealers, companies managing investment funds, over-the-counter market agents, and intermediaries engaged in the purchase, lease, or borrowing of securities. This resolution sets forth directives about the regulation of article 21 paragraphs (A) and (B) of the Anti-Money Laundering Law regarding the terms, opportunities and restrictions for compliance with duty to report suspicious transactions. Such resolution establishes general rules regarding customer identification, information to be requested, documentation to be kept and the proceedings to detect and inform suspicious transactions. Among other things, pursuant to such resolution, (a) any transaction suspected of involving money laundering must be reported to the UIF within 30 days as from its execution (or attempted execution), whereas any transaction suspected of financing terrorism must be reported within 48 hours as from its execution (or attempted execution), and (b) all clients must provide the aforementioned reporting agents with (i) a sworn statement as to the origin of the funds involved in the transaction, for transactions equaling or exceeding AR\$ 40,000; and (ii) information and documentation evidencing the declared origin of funds, for transactions equaling or exceeding AR\$ 200,000.

### *Brazil.*

The legislative framework to address the problem of money laundering in Brazil is contained in the Law No. 9,613 of 3 March 1998. The aforementioned law establishes the necessary legal measures, such as the definition of the money laundering offence, preventive measures, suspicious activities reporting system and various procedures for international cooperation. This Law also establishes a list of predicate offences, which is not exhaustive, but includes the major criminal activities according the Brazilian Penal Code, such as terrorism and its financing.

Law No. 9,613 incorporates into Brazilian legislation a number of international initiatives (Vienna Convention, Palermo Convention, UN Convention against the Financing of Terrorism, UN Convention against Corruption, the FATF 40+9 Recommendations, etc.). A key characteristic of the Brazilian anti-money laundering is its reliance on both a central authority, the *Conselho de Controle de Atividades Financeiras* or COAF (the financial intelligence unit) as well as sector specific authorities to cover all the entities of the banking and financial sectors.

The most significant anti-money laundering reform since 1998 is the enactment of Complementary Law 105 of 20 January 2001, which extended COAF's access to information subject to banking secrecy. In addition, Law 10,701/03 added the financing of terrorism as a predicate offence for money laundering, provided additional authority for COAF to obtain information from reporting parties, and creates a national registry of bank accounts.

COAF, which is embedded in the Ministry of Finance, plays a central role in the Brazilian anti-money laundering and countering the financing of terrorism system not only at the operational level but also at the policy level through its plenary council, which is comprised of representatives from all the responsible bodies and ministries that meet as needed. COAF

has been also responsible for coordinating the Brazilian participation in several international organizations, such as FATF, GAFISUD, Egmont Group, and CICAD/OAS.

Moreover, aiming at improving the coordination among the governmental bodies involved in this issue, the Ministry of Justice have promoted the elaboration of a strategic plan for fighting against money laundering (ENCLA). The ENCLA involves all the relevant ministries and agencies (both at Federal and State levels), as well as the Congress, General Attorneys, and the Judiciary Power, both in Federal and State levels.

Law 9,613/98 creates a generally comprehensive framework of anti-money laundering requirements for a wide range of financial institutions. The law makes general requirements for customer identification, record-keeping, and suspicious transaction reporting, which are to be specified and enforced by the existing supervisory agencies.

Requirements for banks are contained in BCB Regulation 3,461. Anti-money laundering requirements for the securities and insurance sectors are specified in CVM Instruction 301 and SUSEP Regulation 200, respectively.

Financial institutions are required, among other things, to: (a) identify and maintain data on all clients; (b) keep a file on all transactions performed by such clients, which exceed the limits set forth by the competent authority, for a 5-year period; (c) comply with all requests of COAF; and (d) inform the competent authorities (without the client's knowledge) of any transaction which involves an amount which exceeds the limit set forth by the competent authorities.

On July 24, 2009, the BCB issued Regulation 3,461 ("Regulation 3,461"), which consolidated the procedures to be complied with by financial institutions in order to prevent the crimes set forth in Law 9,613/98, or Money Laundering Crimes. Regulation 3,461 sets forth requirements to be complied with by financial institutions related to: (a) internal policies and controls systems, (b) record of customer information, (c) record of financial services and transactions, (d) record of checks and transfer of funds, (e) record of prepaid cards, (f) record of handling of resources in excess of R\$100,000, and (g) report of material information to COAF.

Financial institutions shall develop and implement internal policies and control systems that: (a) identify the responsibilities of the members of each of the hierarchical levels of the financial institutions; (b) contemplate collection and registration of information systems that shall enable the identification of transactions that may constitute a Money Laundering Crime in a timely manner; (c) define criteria and proceedings for the selection and training of the employees of financial institutions, as well for monitoring their economic and financial conditions; and (d) reflect the necessity of previous analysis of new products aiming at preventing the Money Laundering Crimes. In addition, such internal policies and control systems shall encompass measures that shall enable financial institutions to (a) confirm the customer identification; (b) identify the final beneficiary of the transactions; and (c) identify politically exposed persons.

The identification of individuals and legal entities must be recorded in a regularly updated customer information file, at least on an annual basis, pursuant to Regulation 3,461. All files may be stored either physically or electronically. Regulation 3,461 provides for different levels of record requirements by financial institutions depending on the type of relationship maintained with the customer, whether on an occasional or on a permanent basis.

Financial institutions must record all the financial services rendered to or financial transactions entered into with their customers. The information about the financial services shall be recorded in order to enable them to identify: (a) if the relevant resources are compatible with the financial and economic conditions of the customer; (b) the origin of the resources; and (c) the ultimate beneficiary of the resources. The record system of financial transactions must enable the identification of (a) transactions conducted by a person, group of persons or corporate group, separately or jointly, in excess of R\$10,000 per month; and (b) transactions that may constitute, in view of their frequency, amount or structure, a way to avoid the identification, control and record mechanisms of the financial institutions.

The information about checks and transfers of funds must be recorded in order to enable the Financial Institutions to identify: (a) transactions involving receipt of deposits by virtue of electronic transfer of amounts, wire transfer, check, bank check and other documents with equivalent nature, as well as set-off checks deposited in other financial institutions; and (b) transactions involving the issuance of checks and bank checks, wire transfer, electronic transfer of amounts and document of credit in excess of R\$1,000.

Financial institutions shall record information about cards with a function to receive charge or recharge of amounts, in national or foreign currencies, as a result of a payment in cash, a foreign exchange transaction or any other transfer of deposit accounts. Such registration system shall enable the identification of the following events: (a) the issuance or recharge of values, in one or more prepaid cards, in amounts of or in excess of R\$100,000, or any equivalent amounts in other currencies, per month; and (b) the issuance or recharge of values in prepaid cards that may evidence, conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables.

Financial institutions must record any information about deposits in cash, withdrawals in cash, withdrawals in cash by means of prepaid cards and request of withdrawal provisioning in order to enable the identification of: (a) deposits in cash, withdrawals in cash, withdrawals in cash by means of Prepaid Cards and request of withdrawal provisioning in amount of or in excess of R\$100,000; (b) deposits in cash, withdrawals in cash, withdrawals in cash by means of prepaid cards and request of withdrawal provisioning that may evidence conceal or disguise the true nature, origin, location, disposition, movement, or ownership of assets, rights and valuables; and (c) issuance of bank check, electronic transfer of amounts or any other instrument of transfer of funds that comprises payment in cash in amounts of or in excess of R\$100,000.

Financial institutions must report to COAF, without the knowledge of the relevant client, the occurrence of the following events or proposals leading to such events: (a) the issuance or recharge of values, in one or more prepaid cards, in amounts of or in excess of

R\$100,000, or any equivalent amounts in other currencies, per month; and (ii) deposits in cash, withdrawal in cash, withdrawal in cash by means of prepaid cards and request of withdrawal provisioning in amount of or in excess of R\$100,000.

Brazilian financial institutions are also subject to strict bank confidentiality regulations. The only circumstances in which information about clients, services or operations of Brazilian financial institutions or credit card companies may be disclosed to third parties are the following: (i) the disclosure of information with the express consent of the interested parties; (ii) the exchange of information between financial institutions for record purposes; (iii) the supply to credit reference agencies of information based on data from the records of subscribers of checks drawn on accounts without sufficient funds and defaulting debtors; and (iv) as to the occurrence or suspicion that criminal or administrative illegal acts have been performed, financial institutions and the credit card companies may provide the competent authorities with information relating to such criminal acts. Supplementary Law No. 105 enacted on January 10, 2001 also allows the BCB or the CVM to exchange information with foreign governmental authorities, *provided that* a specific treaty in that respect has previously been executed.

Financial institutions must maintain the secrecy of their banking operations and services provided to their customers. Certain exceptions apply to this obligation, however, such as the sharing of information on credit history, criminal activity and violation of bank regulations or disclosure of information authorized by interested parties, as discussed above. Bank secrecy may also be breached when necessary for the investigation of any illegal act. Government and auditors from the Brazilian Internal Revenue Service may also inspect an institution's documents, books and financial registry in certain circumstances.