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Argentina's System of Foreign Investments

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Abstract

The purpose of this article is to provide the practitioner with an understanding of Argentina's foreign investment norms, supply some general information related to this area and, whenever possible, explain how the authorities have applied the law to specific cases. A discussion of the Anglo-Argentine South Atlantic confrontation and its effect on foreign investment is included.

ARGENTINA'S SYSTEM OF FOREIGN INVESTMENTS

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INTRODUCTION

Argentina's official attitude toward foreign investments has passed through various phases according to the prevailing political mood.¹ Since 1976, a genuine desire to attract foreign investments has been the predominant attitude. Foreign investments are now

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1. Foreign investments were not subject to any particular laws, with the exception of foreign exchange regulations, until 1948. The foreign exchange regulations, however, were too general and did not attempt to implement a foreign investment policy. The first attempt toward implementation of a foreign investment policy was made by the Decree of March 6, 1948. No. 3,347, [1948] VIII Anales de Legislación Argentina [Anales] 380. The principal aim of this decree was to favor the establishment of foreign industries, but the only incentive explicitly offered was a reduction of "red tape." *Id.* art. 6.

The first fully articulated system of foreign investments was instituted by the Law of August 28, 1953. No. 14,222, [1953] A Anales 157. This law had 135 rather brief articles. Foreign investors were to receive "the same treatment as that granted to similar Argentine enterprises." *Id.* art. 4. Registered investors could repatriate profits two years after accrual. *Id.* art. 6. Capital could be repatriated only after 10 years. *Id.* art. 10. Unregistered investors lost the right to repatriation. *Id.* art. 11.

A new effort to regulate foreign investments in Argentina was made by the Law of December 30, 1958. No. 14,780, [1958] A Anales 314. Law 14,780 consisted of eight articles and was cast in liberal terms. Its statement of legislative intent underlined the country's need for foreign capital while expressing that the "Argentine economy has reached a degree of development high enough to impede interference with the country's political life by foreign capital investments." *Id.* at 315. The general tone was liberal and confident.

Twelve years later, Law 14,780 was repealed by the Law of February 12, 1970. No. 18,587, [1970] A Anales 150. The new enactment was entitled Industry-Promotion, and, of 11 articles, only article 6 related specifically to foreign investments. The statement of legislative intent concluded: "As to foreign investments, no innovation has been made concerning those general standards and guarantees already established by the Nation." *Id.* note to the Executive.

The following year, a new government introduced a different system embodied in the Law of August 5, 1971. No. 19,151, [1971] B Anales 1431. This new law approached the subject with greater specificity and with a higher degree of sophistication. One of its aims was "to dissipate any uncertainty and to create, in consequence, the necessary climate of confidence." *Id.* at 1432 note to the Executive. Another express goal was "not to hinder the acquired rights by enterprises established in the country under previous laws." *Id.*

Up to that point, the Argentine response to foreign investments had generally been tolerant and open. However, this attitude was brought to an abrupt end by the Law of December 6, 1973. No. 20,557, [1973] D Anales 3670. Distrust towards foreign capital had

regarded as a way to raise the country's standard of living and exploit its enormous natural wealth.²

Argentina's Foreign Investments Act (the Act), which was enacted in 1976³ and amended⁴ in 1980,⁵ embodies the current liberal outlook toward foreign investments. The Act has been implemented by a regulatory decree, which was adopted in early 1981 (the Decree).⁶ The Act and the Decree are the two main pillars of Argentina's foreign investments system. Of secondary importance are several resolutions and internal regulations.⁷

won the day, and the emphasis was on restrictions. Investments made in areas that were considered very sensitive became subject to expropriation. *Id.* art. 20.

The tide receded when a military government, which is still in power, assumed command. In a short time a new law was enacted. Law of Aug. 19, 1976, No. 21,382, [1976] C Anales 2071. This new law was followed by amendments which were introduced by the Law of April 25, 1980, No. 22,208, [1980] B Anales 1024, and was restructured by the Decree of June 24, 1980, No. 1062, [1980] C Anales 2585. As will be explained later, this system is a reaction against Law 20,557 and, being more liberal, comes closer to the previous enactments.

2. Literature in English concerning Law 21,382 can be found in the following publications: Bomchil, *The New Foreign Investment Regime in Argentina*, 7 BROOKLYN J. INT'L L. 27 (1981); Giacchino, *Foreign Investment Under Contemporary Argentine Law*, 26 AM. J. COMP. L. 91 (1978); McKinnis, *The Argentine Foreign Investment Law of 1976*, 17 COLUM. J. TRANSNAT'L L. 357 (1978); Studwell & Cabanellas, *The New Argentine Foreign Investment Law: An Analysis and Commentary*, 1 HASTINGS INT'L & COMP. L. REV. 37 (1977).

3. Law of Aug. 19, 1976, No. 21,382, [1976] C Anales 2071.

4. Law of Apr. 25, 1980, No. 22,208, [1980] B Anales 1024.

5. The Act was restructured in 1980 as a result of Decree of June 24, 1980, No. 1062, [1980] C Anales 2585, translated in 1981 BOLETÍN SEMANAL DE ECONOMÍA 2787 annex B at 21. All references to the Act are to the text set out in Decree No. 1062. The Spanish name of the Act is *Ley de Inversiones Extranjeras* (*Texto ordenado en 1980*).

In this Article, laws and decrees are cited from *Anales de Legislación Argentina* (*Anales*). New material, not yet incorporated into *Anales*, is cited from *Boletín Informativo, Anales de Legislación Argentina*. The *Boletín Informativo* is an early version of what shall later be incorporated into *Anales*. The official gazette (*Boletín Oficial*) is the means of publication that renders laws enforceable. The dates used in this Article in citing Argentine statutes refer to the day of publication in the *Boletín Oficial*.

6. Decree of Jan. 19, 1981, No. 103, [1981] A Anales 261, translated in 1981 BOLETÍN SEMANAL DE ECONOMÍA 2787 annex B at 27.

7. The resolutions are mostly approvals of investments, granted by the administrative authority. Resolutions are numbered consecutively starting on the first day of every year. The year the resolution was adopted is indicated at the end of the citation. See, e.g., *infra* notes 103, 144. Other ministries and administrative authorities issue their own resolutions. It is crucial, therefore, to determine not only the proper number and year, but also the authority which issued the resolution.

The most important regulation is called General Norms for the Presentation of Foreign Investment Proposals and is incorporated into Resolution 153/80. 1981 BOLETÍN SEMANAL DE ECONOMÍA 3. See *infra* note 114. Pursuant to Resolution 153/80, the administrative authorities have compiled a list of elements that must be proved, according to different types of

There have been no judicial decisions relating to foreign investments since the Act became law.⁸ Judicial review has not occurred mainly because rejected investors rarely seek judicial relief.⁹ Furthermore, administrative rejections of foreign investments are not reported,¹⁰ but approved investments are regularly published in the *Boletín Oficial*, along with the reasons for their approval. The reported approvals, although useful, leave many areas of the Act untouched. This is so largely because developments following approval are usually considered to be the investor's private matter and are settled by the authorities without publication.

The lack of information regarding the application of the Act makes it necessary to concentrate on the most important normative materials: the Act and the Decree. The Decree allows a keen insight into how the Act is administered. It can, in fact, be read as an instruction manual which is followed very closely by the authorities.¹¹

investments. This list, drafted in Spanish, is called *Elementos Probatorios* and has not been published (copy on file at the offices of the *Fordham International Law Journal*).

8. Argentina's leading collections of court cases do not include any entry concerning foreign investments from 1977 to the present.

9. Argentina's Constitution, enacted in 1853, has followed the American model very closely, and it firmly establishes the principle of judicial review of administrative action. Article 100 of the Argentine Constitution provides, in part, that: "The Supreme Court of Justice and the lower courts of the Nation have jurisdiction over and decide all cases dealing with matters governed by the Constitution and the laws of the Nation" CONSTITUCIÓN DE LA CONFEDERACION ARGENTINA art. 100. For an English translation, see ORGANIZATION OF AMERICAN STATES, CONSTITUTION OF THE REPUBLIC OF ARGENTINA 1853 (1960).

However, the likelihood of success in a legal action seeking to overturn an administrative denial to invest is not great. In such a technical area, the courts are likely to uphold the administrative decision unless it is clearly proved wrong by the potential investor. Furthermore, the potential investor may not want to force his way into the country after having been initially rejected.

A different situation is created when an adverse decision is passed on an investment already approved, as, for instance, in connection with taxation or with repatriation of profits. Here, resort to judicial relief would be more plausible. However, the lack of reported cases indicates either that such differences do not occur, or that they are settled on an administrative level.

10. The administrative authorities do not like to be seen rejecting investment proposals. To avoid rejections, the authorities have gone so far as to suggest to the prospective investor that his application be withdrawn. See McKinnis, *supra* note 2, at 373.

11. A typical pattern in Argentine legislation is the interaction between a law, a decree and administrative regulations. The law only sets down the most basic principles. The decree explains how the law must be administered but may also extend beyond the scope of the law. Finally, administrative regulations and resolutions are more detailed. The decree overrides the administrative regulation or resolution, and the law overrides the decree.

The purpose of this Article is to provide the practitioner with an understanding of Argentina's foreign investment norms, supply some general information related to this area and, whenever possible, explain how the authorities have applied the law to specific cases.¹² A discussion of the Anglo-Argentine South Atlantic confrontation and its effect on foreign investment is included.

I. SOME LATIN AMERICAN TRENDS

To place the Argentine system in perspective, it is helpful to compare it to the systems of other Latin American countries. Perhaps the most significant single legal development in Latin American regulation of foreign investments is Decision 24, issued by the Commission of the Cartagena Agreement in 1970.¹³ Decision 24 is a systematic and coordinated body of legislation¹⁴ constituting a foreign investment code applicable to all members of the Andean Common Market. The main principles underlying Decision 24 are a restrictive attitude toward foreign enterprises, exclusion of some economic sectors from foreign investments, and limitations on the repatriation of profits.¹⁵ It was against this background that Argen-

12. The common law practitioner should be aware that Argentina is a civil law country and, as such, the importance of precedent is not as strong as otherwise could be expected. Conversely, Argentina's courts and administrative authorities feel more strongly bound by statutory law than their American counterparts.

13. Common Regime of Treatment of Foreign Capital and Trademarks, Patents, Licenses, and Royalties of December 31, 1970, 8 DERECHO DE LA INTEGRACIÓN 71 (1971), amended by Decision 37, 1 REGIMEN DEL MERCADO ANDINO (Legislación Económica) 190-1 (May-Sept. 1978), Decision 70, 2 Grupo Andino (Jan. 31-Feb. 13, 1973) 1, Decision 103, 49 Legislación Económica 2 (1977), Decision 109, *id.* [hereinafter cited as Decision 24]. For an English translation, see 16 I.L.M. 138 (1977).

14. Supreme Decree of June 30, 1971, No. 09798, 11 Gaceta Oficial de Bolivia 13,553; Decree of June 25, 1971, No. 482, 58 Recopilación de Leyes 451 (Chile); Decree of June 30, 1971, No. 1299, 38 Legislación Económica 316 (Colom.); Decree of June 30, 1971, No. 974, 1971 Registro Oficial (No. 264) 1 (Ecuador); Decree Law of June 30, 1971, No. 18,900, 60 Normas Legales 321 (Peru); Law of Sept. 26, 1973, 1973 Gaceta Oficial (No. 1620 Extraordinario) 1 (Venez.).

Specialized studies on the respective member states of the Andean Common Market can be found in the following sources: Carl & Johnson, *Venezuela and the Andean Common Market*, 7 DEN. J. INT'L L. & POL. 151 (1978); Horton, *Peru and ANCOM: A Study in the Disintegration of a Common Market*, 17 TEX. INT'L L.J. 39 (1982); Murphy, *The Andean Common Market and Mexico: A Foreign Investment Profile*, 13 TEX. INT'L L.J. 307 (1978); Comment, *Chile's Rejection of the Andean Common Market Regulation of Foreign Investment*, 16 COLUM. J. TRANSNAT'L L. 138 (1977).

15. The exclusion from some economic sectors is mainly established by article 3 of Decision 24, which provides in part as follows: "Member countries shall not authorize any direct foreign investment in activities which they consider are adequately covered by existing

tina's Law 20,557¹⁶ of 1973, a precursor of the Act, was repealed.¹⁷ The old law had been even more restrictive than Decision 24.¹⁸

In response to this generally adverse legislation and the resulting flight of investors from other Andean Common Market countries, Uruguay¹⁹ and Paraguay²⁰ attempted to attract foreign investments by enacting liberal legislation. The strong nationalistic trend of Decision 24 was further subverted when Chile withdrew

enterprises. Likewise, they shall not authorize any direct foreign investment of which the purpose is to acquire shares, participations, or rights owned by national or subregional investors" Decision 24, *supra* note 13, art. 3.

Limits on the repatriation of profits stem basically from article 37, which provides in part as follows:

Upon authorization by the competent national authority, the owners of a direct foreign investment shall have the right to transfer abroad, in freely convertible currency, the verified net profits resulting from the direct foreign investment, but not in excess of 20% of that investment annually.

However, each Member Country may authorize greater percentages and shall communicate to the Commission the provisions or decisions taken in this respect.

Id. art. 37.

16. Law of Dec. 6, 1973, No. 20,557, [1973] D Anales 3670.

17. Decision 24 had a great impact on Law 20,557. New ideas, principally concerning repatriation of capital and profits, areas of exclusion, and state intervention in general, were borrowed from Decision 24. "The Argentines were primarily inspired by the pioneering innovations of Decision 24 . . ." Stebbings, *The Argentine Foreign Investment Law and Its Andean Common Market Inspiration*, 8 VAND. J. TRANSNAT'L L. 280, 280 (1975).

18. For example, while article 17 of Decision 24 allowed domestic short-term and medium-term credit to foreign investors, article 17 of Law 20,557 granted only domestic short-term credit to foreign investors. In fact, so restrictive was the Argentine enactment that under Law 20,557 no new foreign investments were made. See McKinnis, *supra* note 2, at 364-65.

19. See Decree of Oct. 10, 1974, No. 808/974, [97 Second Semester I] Registro Nacional de Leyes y Decretos 988 (Uru.). Approval of foreign investments is given by the Executive, but when the amount is below U.S.\$100,000, the Ministry of Economy can decide without further recourse. *Id.* art. 5. The state guarantees the repatriation of profits and capital in the way contractually agreed upon, *id.* art. 13, but the invested capital cannot be withdrawn during the first three years. *Id.* art. 14. Profits below 20% can be repatriated with no additional tax, but a 40% tax is levied on profits above 20%. *Id.* art. 21.

20. See Law of Dec. 19, 1975, No. 550, LA LEX, July-Sept. 1980, at 126. Investments are classified as necessary or convenient. *Id.* art. 2. Necessary investments are "those which have priority in the economic development of the country, and which will produce or process raw materials, thereby increasing exports." *Id.* art. 3. "Convenient investments are those contributing to the substitution of imports and to a greater utilization of material resources." *Id.* art. 4. Necessary investments enjoy greater advantages in that they receive a 50% reduction of income tax for a period of five years, while convenient investments only receive a 30% tax reduction. *Id.* art. 11, para. e; art. 12, para. e. Benefits under Law 550 must be requested from the Ministry of Industry and Commerce. *Id.* art. 39. When the project involves over 5 million guaranies (approximately U.S.\$40,000) the National Council for Economic Coordination shall decide.

from the Andean Common Market and passed a highly permissive law for foreign investments.²¹ The Chilean transition from a rigid to a flexible system paralleled Argentina's passage of the Act and repeal of the former, more restrictive legislation.²²

Bolivia recently enacted a new system without upsetting the principles embodied in Decision 24. This new system is more open to investors than the previous system and contains more incentives.²³ Cuba has also adopted a new system which, for the first

21. Decree Law of Mar. 11, 1977, No. 1,748, 70 Recopilacion de Decretos Leyes 133 (Chile).

Chile's desire to attract foreign business is evident in other enactments. An example is Decree Law 2,349, on rules for international contracts of the public sector. Decree Law of Oct. 28, 1978, No. 2,349, 73 Recopilacion de Decretos Leyes 520 (Chile). Law No. 2,349, uncharacteristically for a Latin American jurisdiction, waives sovereign immunity. Article 1 provides:

Stipulations intended to subject to foreign law international contracts whose main objective concerns transactions or operations of an economic or financial nature, executed or to be executed by international or foreign organisms, institutions, or enterprises whose main center of operations is located abroad with the Chilean State or with its organisms, institutions or enterprises, are declared to be valid.

Stipulations by which disputes arising out of such contracts have been or are submitted to the jurisdiction of foreign courts including courts of arbitration contemplated in pre-established mechanisms of arbitration or in the respective contract, as well as stipulations by which special domiciles have been or are established and agents abroad have been or are designated for purposes of the contract, are likewise valid.

By submission to the jurisdiction of a foreign court, the right to invoke immunity from jurisdiction will cease, unless in case of express stipulation to the contrary.

Id. art. 1.

Compare this approach to the more restrictive one implemented in Argentina by the Law of November 9, 1973, No. 20,548, [1973] D Anales 3657, of which article 7 states: "The Executive is likewise empowered . . . to submit eventual disputes with foreign persons to judges of other jurisdictions, arbitral tribunals with a third arbitrator impartially appointed, or to the International Court of Justice of the Hague." *Id.* art. 7. See also W. GOLDSCHMIDT, *DERECHO INTERNACIONAL PRIVADO* 445-46 (1982).

22. For a comparative study, see *FOREIGN INVESTMENT AND TRANSFER OF TECHNOLOGY LAWS AND REGULATIONS IN LATIN AMERICA: RECENT DEVELOPMENTS AND TRENDS IN MEXICO, VENEZUELA, BRAZIL AND ARGENTINA* (J. MOSCOSO ed. 1981). See also *A Comparative Study of Latin American Legislation on the Regulation and Control of Private Foreign Investment*, OAS Doc. No. AG/806/77 (1977).

23. See Supreme Decree of Dec. 14, 1981, No. 18,751, 22 Gaceta Oficial de Bolivia (No. 1252) 7. The text of the new law was not published with its approval and consequently, it is not yet in force. The new law consists of 111 articles. One of its major incentives is a powerful tax reduction, which reaches a 100% exemption from income tax for agricultural activities. Investments fall into different categories according to the particular industry in question and the percentage of domestic raw materials used. Repatriation of profits is guaranteed by the state. Investments in underdeveloped regions receive an even more favorable treatment. For

time in twenty years, allows foreign investments of up to forty-nine percent in joint ventures.²⁴

The most recent example of this liberal trend is afforded by Peru.²⁵ In 1982, Peru enacted Law 23,407, known as the Industrial Law.²⁶ This statute eliminates restrictions in several investment areas, grants superior tax advantages, and provides other incentives designed to lure foreign capital.²⁷ Furthermore, the structure of Decision 24 has been liberalized with respect to repatriation of profits²⁸ and reception of new investments.²⁹

an English commentary, see *Bolivians Devise New Incentives to Lure Investors*, 1982 BUS. LATIN AM. 51; *Noticias-Latin American Report* 3 (May 19, 1982) (available at the National Foreign Trade Council, Inc., New York).

24. The Legislative Decree of February 15, 1982, No. 50, 80 *Gaceta Oficial Extraordinaria* 11 (Cuba), establishes the legal conditions under which economic associations involving Cuban and foreign entities may join their efforts for the purpose of expanding Cuban exports and foreign tourism in Cuba. The project must be approved by a special committee. *Id.* art. 1. Once approved, the joint enterprise acquires a legal personality independent from the Cuban state. *Id.* art. 10. A 30% tax is levied on net annual profits, but temporary exemptions can be applied for. *Id.* art. 26. Labor regulations, for Cuban and foreign personnel are stipulated. *Id.* arts. 36-44. See Chamber of Commerce of the Republic of Cuba, *Possibility of Joint Ventures in Cuba* (Feb. 1982).

Joint venture and foreign investment legislation are no longer a rarity in socialist countries. See, e.g., Decree of Mar. 28, 1980, No. 535 (Bulgaria), *reprinted in* 19 I.L.M. 992 (1980) (on economic cooperation between Bulgarian and foreign juridical persons); Ministry of Finance Decree No. 7/1977, 1977 *Törvények és Rendeletek Hivatalos Gyűjtőmánya* 944 (Hung.), *reprinted in* 17 I.L.M. 1451 (1978) (on economic associations with foreign participation); Council of Ministers Resolution of Feb. 23, 1979, No. 24/1979, 1979 *Monitor Polski* (No. 4) 29 (Pol.) (on foreign investments); Decree of Nov. 2, 1972, No. 424, [1972] IV *Colecția de Legi si Decrete* 825 (Rom.), *reprinted in* 12 I.L.M. 651 (1973) (on the constitution, organization and operation of joint ventures); Law of Apr. 15, 1978, 1978 *Službeni List* 501 (Yugo.), *reprinted in* 18 I.L.M. 229 (1979) (on investment of resources of foreign persons in domestic organizations of associated labor). For an analysis of joint venture laws in Eastern Europe, see Scriven, *Joint Venture Legislation in Eastern Europe: A Practical Guide*, 21 *HARV. INT'L L.J.* 633 (1980). For an examination of the People's Republic of China law on joint ventures, *The Law of the People's Republic of China on Joint Ventures using Chinese and Foreign Investment*, *BEIJING REV.*, July 20, 1979, at 24, *reprinted in* 18 I.L.M. 1163 (1979), see Rich, *Joint Ventures in China: The Legal Challenge*, 15 *INT'L LAW* 183 (1981).

25. For a study on Peru's role within the Andean Common Market from the point of view of foreign investments, see Horton, *Peru and ANCOM: A Study in the Disintegration of a Common Market*, 17 *TEX. INT'L L.J.* 39 (1982).

26. Law of May 28, 1982, No. 23,407, 115 *Normas Legales* 190 (Peru).

27. For an English commentary, see *Peru's New Industry Law Raises Company Optimism, Yields, Investment Perks*, 1982 *BUS. LATIN AM.* 186.

28. See National Commission on Investments and Foreign Technologies Resolution of Oct. 23, 1981, No. 003-81-EFC/75, 111 *Normas Legales* 403 (Peru). This resolution allows an annual repatriation of profits in excess of 20% of the investment. *Id.* art. 3. Article 37 of Decision 24 had set 20% as a ceiling. However, article 37 also accorded to each member

This cursory review indicates that the latest Latin American trend favors a liberal policy towards foreign investments, the purpose of which is to attract badly needed hard currency. Thus, it appears that Argentina's system is in harmony with those of its neighbors.

II. GENERAL CLIMATE FOR INVESTMENT IN ARGENTINA

Historically, Argentina has been receptive to foreign investments. Up to 1925, the largest investors were British firms that principally exploited the railroad and meat processing industries.³⁰ By 1950, however, United States firms had established themselves in the leading position, which they still hold.³¹ In 1975, for example, nearly sixty percent of the foreign investments in Argentina were of United States origin.³² From 1977 to mid-1980, approved United States investments dropped to below fifty percent of total investments but the United States remained the leader.³³ It is clear that Argentina traditionally has both sought and relied on foreign investments as a way to attain economic and industrial development. The prospective investor is, therefore, likely to find that his project is treated with respect and favor.³⁴

It is also true, however, that Argentina is not a stable country. Political and economic changes can precipitate very rapidly. Perhaps the fairest way of describing the Argentine investment climate would be as one of relative stability; official policy and plans are usually carried out, but often following prolonged delays. It is only after a period of general disbelief, bad results, or several forms of

country the power to increase this percentage. The Peruvian resolution expressly mentions that its new ceiling was fixed in agreement with article 37 of Decision 24. *Id.* art. 1. *See supra* note 15.

29. *See* National Commission on Investments and Foreign Technologies Resolution of Aug. 4, 1981, No. 002-NG-81-EFC/35, 110 Normas Legales 135 (Peru). The resolution consists of 11 articles and it lays down the requirements and procedure to be followed for authorization of new foreign investments.

30. Wasserman, *Anglo-Argentine Trade*, 16 J. WORLD TRADE L. 366 (1982).

31. *See* LATIN AM. TIMES, Sept. 1982, at 8.

32. *Id.*

33. "Between March 1977 and June 1980 total approved foreign investment reached US\$1,503m. The main investing countries were USA (US\$652m), the Netherlands (US\$217m), West Germany (US\$142m), Italy (US\$118m), and France (US\$101m)." 15 BANK LONDON & S. AM. REV. 8, 9 (1981).

34. Except for the period 1973-1976, foreign investments have been encouraged as official policy.

opposition that an official policy is dropped and a new policy adopted.³⁵

Obviously, the foreign investor will have to operate within an imperfect political and economic framework. Since investments are officially protected and encouraged,³⁶ however, adverse effects of the general political and economic climate are minimized. For instance, the continuing colossal increase in the dollar rate which began in 1981, places foreign investors with hard currency in a very favorable position.³⁷ At the same time, Argentine exports have become more competitive in international markets. Twenty-six out of the fifty largest firms in the world currently have investments within the country,³⁸ suggesting that Argentina's overall political and economic environment is favorable to investors.

The Argentine government has adopted a policy of turning over state-owned business enterprises to the private sector.³⁹ Neologisms such as "privatization" (*privatización*) and "destatalization" (*desestatización*) are rife in speeches and in people's thoughts. They denote the government's plans of returning business to private hands. Although the Anglo-Argentine war has caused the indefinite

35. A prime example is the national economic policy itself. In March 1976, a military junta assumed power. From then until mid-1982, the junta emphatically applied an economic strategy which was generally regarded as too liberal and, for that reason, was opposed by a large section of the population. This policy eventually ground to a halt, and is now one more casualty of the Anglo-Argentine confrontation.

36. MINISTERIO DE ECONOMÍA, *INVERSIONES EN LA ARGENTINA* 20 (1980).

37. Recent devaluations of the peso have made Argentina "the cheapest country in the world." Argentine News-Letter 1 (Aug. 19, 1982) (available at the Argentine-American Chamber of Commerce, Inc., New York).

38. Buenos Aires Herald, Nov. 15, 1981, at 2, col. 2. The firms listed under this group are: Exxon, Shell, General Motors, Ford, IBM, Fiat, General Electric, Unilever, Renault, ITT, Philips, Volkswagen, Siemens, Mercedes-Benz, Peugeot, Hoechst, Bayer, BASF, Nestle, Toyota, Nissan, Dupont, ICI, Hitachi, and Western Electric.

The greatly varied international commercial links that Argentina has developed are usually mentioned to illustrate the insulation of foreign investments with respect to economic and political tremors. For example, between 1966 and 1980 Argentina has accumulated an enormous trade surplus with the U.S.S.R. At the same time, Argentina assiduously tried to lure American capital, and did not neglect Arab financial strength.

39. This was motivated by the general opinion in the sense that state-owned enterprises are too costly and not very efficient. It was further argued that certain areas where the state enjoys a monopoly, such as telephone services, were being underexploited. Private enterprise was seen as the correct solution for problems of this sort, and the underlying policy was generally referred to as the *plan de desestatización*. See, e.g., *Plan de Desestatización*, 1982 BOLETÍN SEMANAL DE ECONOMÍA 66; *Importancia del Capital Privado en el Negocio de la Telefonía*, 1982 BOLETÍN SEMANAL DE ECONOMÍA 585.

postponement of this program,⁴⁰ the eventual success of such a plan would open up even greater opportunities to the foreign investor.

The degree of safety, or risk, to foreign investment in Argentina has been severely tested during the Anglo-Argentine confrontation over the Malvinas/Falkland Islands. Apart from engaging in an armed conflict which cost the lives of hundreds of soldiers, each country imposed economic sanctions against the other. Argentine assets in the United Kingdom were frozen. In retaliation, Argentina suspended remittance of foreign currency to creditors domiciled or resident in the United Kingdom.⁴¹ Such debts were ordered to be

40. The political earthquake caused by the Anglo-Argentine battles put an end to several economic policies which had been firmly pursued. The denationalization program, although not rejected, has been placed in abeyance. See *Noticias—Latin American Report 2* (June 8, 1982) (available at the National Foreign Trade Council, Inc., New York). See also [July-Dec. 1982] *REV. RIVER PLATE* 88.

41. This was done through use of Decree of April 3, 1982, No. 683, 1982 *Boletín Informativo* (No. 14) 27 (to be reported in 1982 *Anales*), which stated in article 2 as follows: Transactions in Argentine or foreign currency, the amount of which is to be debited for any concept to the account, cash or assets, existing or to be created in the country, either through the entities regulated by Law 21,526 [*infra* note 130] or through private firms, to the name of the physical or juridical persons, resident or domiciled in the United Kingdom of Great Britain and Northern Ireland, are hereby suspended, on a preventive and temporary basis.

Id. art. 2.

To make such restrictions somewhat more flexible, the Executive enacted Decree of May 4, 1982, No. 883, 1982 *Boletín Informativo* (No. 16) 26 (to be reported in 1982 *Anales*), which allowed the Minister of Economy "to determine the interpretation, the applicability, and to permit eventual exceptions to the emergency measures established by Decree 683 of April 3, 1982." *Id.* art. 1. To avoid creating rights for third parties, or to raise expectations, such exceptions are individually granted and they are not published. Banks with a minority British interest which support Argentina's foreign debt position, are good candidates for such exceptions.

Apparently, the British strategy for countering the effects of Decree 683 was to transfer British interests in local firms to non-British third parties, which were immune to the Decree. The Undersecretariat of External Investments blocked that move with Resolution of May 7, 1982, No. 99, 1982 *Boletín Informativo* (No. 17) 49 (to be reported in 1982 *Anales*), which states that "registrations for the transfer of interests in local enterprises, belonging to investors domiciled or resident in the United Kingdom of Great Britain and Northern Ireland, that have been requested from the Registry of Foreign Investments, or that are requested in the future, are suspended on a temporary basis." *Id.* art. 1. Resolution 99 states that the Decree allows the implementation of this restriction as a consequence of its article 39, paragraph u. The latter allows the Undersecretariat of External Investments "to issue general interpretative resolutions and take any other measures that may be necessary to comply with the Act and the present Regulatory Decree, when the responsibility for such measures does not fall upon other agencies." *Id.* art. 39, para. u.

Argentina and the United Kingdom agreed, once hostilities ceased, to reciprocally abandon the economic sanctions imposed against each other. Accordingly, the Argentine government enacted Decree of September 14, 1982, No. 610, 1982 *Boletín Informativo* (No.

paid into an escrow account at the New York Branch of the *Banco de la Nación Argentina*.⁴²

Argentina's strategy was obviously to put pressure on the government of the United Kingdom. It may also have been designed to protect the Argentine debtor from possible lawsuits, by leaving open legal channels of payment.⁴³ Additionally, by holding the money in escrow abroad, Argentina gave the impression that it would be willing to pay its debts once the hostilities were over.

These restrictions were prompted by a state of war and exclusively aimed at the United Kingdom. However, because Argentina was short of foreign currency with which to pay its external debts, it also blocked remittances abroad of foreign currency to all foreign investors, whether or not resident in the United Kingdom. In accordance with article 14 of the Act, the investor wishing to repatri-

30) 24 (to be reported in 1982 Anales), which stated in part as follows:

Article 1. The Minister of Economy is hereby authorized to cancel the financial restrictions established in Decree No. 683/82 [supra], in reciprocity of the measures taken, to the same effect, by the British authorities.

Article 2. The Minister of Economy shall take the necessary measures, to implement the provision of Art. 1.

Id. arts. 1-2.

Thus ended the financial war between Argentina and the United Kingdom, which lasted five months and one day. The economic sanctions "were blocking an estimated US\$1 billion Argentine funds frozen in British banks and a reported US\$3 to 4 billion in British funds blocked in Argentina." Argentine News-Letter 1 (Sept. 30, 1982) (available at the Argentine-American Chamber of Commerce, Inc., New York). For an overview of the economic impact caused in Argentina by the Anglo-Argentine confrontation, see *The Malvinas Crisis: Its Effects on Exchange and Finance*, Argentine News-Letter 2 (May 13, 1982) (available at the Argentine-American Chamber of Commerce, Inc., New York).

42. This was implemented through the Argentine Central Bank communiqué of May 12, 1982, No. 4,625, 1982 BOLETÍN SEMANAL DE ECONOMÍA 2452, which stated in part that: debts for imports and loans whose creditors reside or are domiciled in the United Kingdom of Great Britain and Northern Ireland must be cancelled on maturity, by the local debtor firms or person, by liquidating each transaction into the equivalent amount of American dollars in the following forms:

1. The authorized entities must carry out the pertinent foreign exchange transaction for the debtors, according to general rules and using the type of foreign exchange in force at the time of such transactions.

2. The foreign currency must be transferred into the account "Central Bank of the Republic of Argentina" opened at the *Banco de la Nación Argentina*—Branch New York.

3. Once the circumstances that originate this regulation return to normal, this Central Bank shall cancel with the respective creditors the sums of money paid by local debtors.

43. It is significant in this sense that English law rejects the enforcement of a contract, or any part of it, that would be illegal in its place of performance. See *Ralli Bros. v. Compañía Naviera Sota y Aznar*, [1920] 1 K.B. 614.

ate his capital or his profits was offered the equivalent amount in external bonds instead of foreign currency.⁴⁴

As hostilities escalated in the Anglo-Argentine conflict, Argentina intensified its economic restrictions. On May 19, 1982, the Executive enacted Law 22,591,⁴⁵ which froze all assets in Argentine territory belonging to: (1) the United Kingdom, (2) the British Crown, (3) British subjects not permanently residing in Argentina, (4) foreigners (neither British nor Argentine) resident in the United Kingdom, and (5) any enterprise or entity controlled, directly or indirectly, by any of the above-mentioned persons or organizations.⁴⁶ British subjects (natural persons) who are permanent residents in Argentina are exempted from such restrictions, provided they do not "incur in activities that impair national economy or the country's productive capacity."⁴⁷ This exception is subject to reciprocity from the United Kingdom.⁴⁸ Despite the freeze on assets, Law 22,591⁴⁹ permits, and in fact demands, the continuation of normal business activities by British-controlled companies.⁵⁰

44. See *infra* notes 163, 178 and accompanying text.

45. 1982 Boletín Informativo (No. 18) 13 (to be reported in 1982 Anales).

46. *Id.* art. 1.

47. *Id.* art. 3.

48. *Id.*.

49. *Id.*

50. Law 22,591 terms the freeze of assets as "*indisponibilidad*," defining it as: the prohibition to dispose of assets in any way, and the prohibition to accomplish acts or to enter into contracts that reduce the assets in question, or its productive potential, or that cause the removal of some asset outside national jurisdiction. It does not include those transactions that are current or normal for the concerned person, enterprise or entity.

Id. The freeze is applied to those persons named in article 1, and extended "to their representatives, dependants and any other person." *Id.* The latter classification probably includes those who facilitate the avoidance of such restrictions, for example, by entering into fictitious transactions.

Law 22,591 further creates a National Vigilance Commission (*Comisión Nacional de Vigilancia*), in operation since May 19, 1982. The Commission has ample powers to investigate and to prevent avoidance of Law 22,591. *Id.* arts. 5-6. The duty to "communicate and to inform" about activities contemplated in the Law is created for those who have taken part in them. *Id.* arts. 7-9. Sanctions as severe as imprisonment for 10 years are established in case of violations. In addition, foreigners can be expelled. *Id.* arts. 10-12.

The first judicial interpretation of Law 22,591 was rendered on October 3, 1982. Three British firms were denied the right to vote in a meeting of creditors designed to avoid the bankruptcy of an Argentine company. The court's ruling was described as unexpected. See [July-Dec. 1982] REV. RIVER PLATE 327.

Among other "belligerent" enactments are the Law of May 20, 1982, No. 22,593, 1982 Boletín Informativo (No. 18) 15 (to be reported in 1982 Anales), allowing insurance companies to cover the risk of war, RGIMTA Resolution of May 5, 1982, No. 1,450, 1982 BOLETÍN

Law 22,591⁵¹ was aimed mainly at large corporations operating in Argentina under British control. Pursuant to Law 22,591,⁵² the Undersecretariat of External Investments "has identified and listed 108 enterprises registered as owned and controlled by United Kingdom capital."⁵³

An account of these recent events is necessary in order to appreciate the scenario that foreign investors may face. However, conclusions must not be drawn too quickly. If it is true that the events of the recent past create less than ideal conditions, it is nonetheless true that the circumstances which gave rise to those events were an historical anomaly. Were it not for the state of war between Argentina and the United Kingdom, none of the restrictions on foreign currency would have been implemented. The Anglo-Argentine conflict is as much artificial as it is historical. Had England decided to colonize islands in the South Pacific instead of in the South Atlantic, there would have been little possibility of an Anglo-Argentine confrontation. Due, in part, to its remoteness from areas of international friction, Argentina has not been engaged in any other war in this century.

Argentina is not and should not be suspected of being biased against foreign investors. In fact, the encouragement of foreign investments is well-established official policy.⁵⁴ Argentina's traditional openness to immigration has fostered a strong respect for foreigners.⁵⁵ Foreign natural persons enjoy all civil rights which are

SEMANAL DE ECONOMÍA 1232, establishing new rules for the importation of weapons and explosives for military or civilian use, and Central Bank Communiqué of May 24, 1982, No. A 128, 1982 BOLETÍN SEMANAL DE ECONOMÍA 1235, on collection and payment of foreign debts originated from imports.

51. See *supra* note 45.

52. *Id.*

53. *British Assets in Argentina*, [Jan.-June 1982] REV. RIVER PLATE 566, 566.

54. Argentina is the second largest Latin American country, has vast reserves of natural wealth and is underpopulated. These three factors combine in a way which makes foreign investments a good way to accelerate economic and technical progress. In fact, without foreign investments Argentina would be extremely handicapped. For an overview and general statistical data, see ECON. INFORMATION ARGEN., Nov.-Dec. 1981.

55. The principle of nondiscrimination against foreigners has a constitutional root. Article 20 of the Argentine Constitution states:

Foreigners enjoy in the Nation's territory all the civil rights accorded to citizens; they may engage in industry, commerce, and in professional activities; own real property, buy it and sell it; navigate the rivers and coasts; exercise their religion; make wills and marry according to law. They are not required to become citizens or to pay extraordinary taxes. They can obtain naturalization through residence in the

available to the Argentines, so that their situation is one of civil and commercial equality with Argentine citizens. The same is true of foreign juridical persons.⁵⁶

Although it is true that enactments regarding foreign investments can change according to the prevailing political mood, rights acquired under previous legislation enjoy constitutional protection.⁵⁷ If the Act should be repealed, the foreign investor would, in all likelihood, have the choice to withdraw or to continue under the new law.

Should the Act be amended, it is an open question whether legislation related to foreign investments will change drastically. However, Argentina has learned that restrictions and bureaucratic controls on foreign investments serve no advantageous domestic purpose and only trigger a retreat of actual and prospective investors. Law 20,557⁵⁸ of 1973, repealed by the Act, had this negative effect.

The recent Anglo-Argentine conflict in the South Atlantic cast a shadow over Argentina's political and economic future, making predictions difficult. It is clear that Argentina's reserves of foreign currency have been severely depleted as a result of military expenses and trade embargoes imposed by countries friendly to the United Kingdom.⁵⁹ In this respect, the European Economic Community's ban on Argentine imports was quite effective.⁶⁰

country during two continuous years; the authorities may shorten this term, when so requested, if services to the Republic are alleged and proved.

CONSTITUCIÓN DE LA CONFEDERACION ARGENTINA art. 20. For a comment in English on the application of the Argentine Constitution, see G. BIDART COMPOS, *THE ARGENTINE SUPREME COURT, THE COURT OF CONSTITUTIONAL GUARANTEES* (1982) (privately published—available at the law firm of Allende & Brea, New York).

56. In 1876, the English government tried to extend diplomatic protection to an English enterprise doing business in Argentina. The Argentine Minister of Foreign Affairs, at that time Dr. Bernardo de Irigoyen, held that foreign corporations do not enjoy special political protection or immunities, but have recourse to the legal channels generally established. This position was later assimilated throughout Latin America and known as the "Irigoyen Doctrine." Although foreign enterprises have no special privileges, they also bear no special burden.

57. "Property is inviolable, and no inhabitant of the Nation can be deprived thereof except by virtue of a sentence founded on law. Expropriation for reasons of public utility must be authorized by law and previously compensated . . ." CONSTITUCIÓN DE LA CONFEDERACION ARGENTINA art. 17. For an English text, see ORGANIZATION OF AMERICAN STATES, *CONSTITUTION OF THE REPUBLIC OF ARGENTINA 1853* (1960).

58. [1973] D Anales 3670.

59. 1982 *LATIN AM. INDEX* 67.

60. During 1981, the estimated total exports to European Economic Community countries amounted to 20.5% of all Argentine exports. For a commentary, see *Falklands/Malvinas Fall-Out*, [Jan.-June 1982] *REV. RIVER PLATE* 415.

Some sources predict that Argentina's need for foreign currency will prompt it to promote foreign investments.⁶¹ According to this view, any forthcoming changes will be consistent with the present permissive policy toward investors.⁶²

From the foreign investor's point of view, Argentina has recently offered both drawbacks and benefits. One drawback is the restriction, albeit temporary, on repatriation of capital and profits in foreign currency.⁶³ A compensating advantage is the growth potential that foreign currency enjoys in Argentina due to increasingly favorable exchange rates.⁶⁴

It remains to be seen how the latest events will shape future developments. Much depends on the final settlement of the Anglo-Argentine confrontation and on the political changes the settlement provokes.

Argentina's military rulers have promised to turn power over to a democratically elected government by 1984.⁶⁵ If this promise is kept, it is likely that there will be considerable changes in the foreign investments area. The exact nature of such changes, however, is hard to predict. Some politicians have advocated a more restrictive system, and this could be an indication of what lies ahead.

III. FUNDAMENTAL PRINCIPLES OF THE ACT

The Act⁶⁶ addresses several topics of overriding importance which, because of their general nature, apply to many different situations. The most important of these topics are the treatment accorded foreign investors, the distinction between foreign and domestic investors and the methods of investment.

61. A new strategy has been implemented in order to make industrial exports more profitable. Among the most important incentives, a favorable and stable exchange rate has been established as a protection against local inflation. See *Medidas de Promoción de Exportaciones Industriales*, 1982 BOLETÍN SEMANAL DE ECONOMÍA 2017. For a commentary in English, see *Argentina Expands Export Incentives*, 1982 BUS. LATIN AM. 256. However, more recently, the exchange rate has been unified, reportedly in order to facilitate an International Monetary Fund loan, See *id.* at 346.

62. See, e.g., *Setbacks for Military Mean New Economic Policy in Postwar Argentina*, 1982 BUS. LATIN AM. 142.

63. See *infra* note 168.

64. See *supra* note 37.

65. See N.Y. Times, Sept. 27, 1982, at A9, col. 1.

66. Before discussing the current law, it will be helpful to explain the amendments which were made to the original Act. The Act is derived from Law 21,382, as amended by Law 22,208.

According to the official message addressed to the Executive when the amendments were submitted for consideration, the changes were prompted by the experience of the previous three years during which Law 21,382 was in force. The amendments "tend to simplify and to render more flexible the steps for the approval and registration" of foreign investments, as well as to clarify certain problems of interpretation. Law of Apr. 25, 1980, No. 22,208, [1980] B Anales 1024, 1024 note to the Executive.

These two main goals, simplification and clarification, were clearly attained. The following are among the most important amendments:

(1) Article 4—public sanitary and transportation services have been removed from the list of investments which require previous approval from the Executive.

(2) Investments in the form of capital contributions of used goods have also been removed from this list.

(3) The previous limit of U.S.\$5,000,000, above which Executive approval had to be obtained, has been raised to U.S.\$20,000,000.

(4) Article 5—investments that require prior Executive approval and that do not exceed U.S.\$5,000,000 can be registered automatically. This procedure did not exist before.

(5) Article 7—another innovation is that investments made by purchasing shares at Argentine stock markets are now expressly regulated.

(6) Article 11—the cumbersome and often contradictory system of double registration has been eliminated. The Register of Foreign Investments, formerly the province of the Central Bank, is now operated by the Undersecretariat of External Investments.

(7) Article 18—limitations on obtaining domestic loans have been eliminated in reference to local enterprises of foreign capital.

(8) Article 19—it is now possible to include transitory contributions of foreign capital, such as leasing, services, work, and other contracts.

(9) Article 22—joint responsibility for the acts of enterprises is eliminated with regard to those investors who do not take part in, or do not have corporate control over, such enterprises.

The graph shows the amendments introduced by Law No. 22,208. The articles listed below refer to the Act as restructured by Decree of June 24, 1980, No. 1062, [1980] C Anales 2585.

Foreign Investment Act
Text Amended in 1980

| Article | Source | Article | Source |
|---------|--|---------|--|
| 1 | Law No. 21,382, art. 1 | 14 | Law No. 21,382, art. 13 |
| 2 | Laws Nos. 21,382, art. 2 and 22,208, art. 1 | 15 | Law No. 22,208, art. 10 |
| 3 | Law No. 21,382, art. 3 | 16 | Laws Nos. 21,382, art. 15 and 22,208, art. 11 |
| 4 | Law No. 22,208, art. 2 | 17 | Law No. 21,382, art. 16 |
| 5 | Law No. 22,208, art. 3 | 18 | Law No. 22,208, art. 12 |
| 6 | Law No. 22,208, art. 4 | 19 | Law No. 22,208, art. 13 |
| 7* | Law No. 22,208, art. 5 | 20 | Law No. 21,382, art. 19 |
| 8 | Law No. 22,208, art. 6 | 21 | Laws Nos. 21,382, art. 20 and 22,208, art. 14 |
| 9 | Law No. 21,382, art. 7 | 22 | Law No. 22,208, art. 15 |
| 10 | Law No. 21,382, art. 8 | 23 | Law No. 21,382, art. 22 |
| 11 | Law No. 22,208, art. 8 | 24 | Law No. 22,208, art. 16 |
| 12 | Law No. 21,382, art. 11 | | |

* Article 7 repealed article 9 of Law 21,382.

Source: 1981 BOLETÍN SEMANAL DE ECONOMÍA 371.

A. Treatment Accorded Foreign Investors

Article 1 of the Act grants national treatment or *régime national* to foreign investors.⁶⁷ This means that discrimination against foreign investors is not allowed. Argentine legislation, including the National Constitution, statutes and decrees, applies to both Argentine and foreign investors. The main principle is that of equality between local and foreign investors. Exceptions to this principle must be precise and reasonable.⁶⁸

In the past foreign investments were subject to either too few or too many restrictions. Recently the trend has been toward a zealous excess of restrictions which has frightened away prospective investors.⁶⁹ The Act attempts to guard against both extremes and to obtain a reasonable balance.

B. What Is Foreign and What Is Local

Article 2 of the Act includes four important definitions. First, an *investment of foreign capital* means any contribution of capital made by a foreign investor and applied to "economic activities" in Argentina.⁷⁰ Acquiring shares of an existing Argentine enterprise also falls within this category.⁷¹ "Economic activities" are defined by the Decree as all industrial, mining, agricultural, commercial and financial activities, services and other operations connected with the production or exchange of goods and services.⁷²

Second, *foreign investor* is defined as any natural or juridical person who is domiciled abroad and who has invested foreign capital in Argentina.⁷³ Domestic enterprises of foreign capital, as defined below, also fall within this category when they invest in other local enterprises.⁷⁴

67. Article 1 reads: "Foreign investors who invest capital in this country . . . to promote economic activities, or to expand or improve existing activities . . . shall have the same rights and obligations as those granted . . . to national investors . . ." Art. 1, [1980] C Anales 2585, 2586.

68. The principle of national treatment is subject to the provisions of the Act, and of special or promotional regimes. *Id.*

69. The Law of December 6, 1973, No. 20,557, [1973] D Anales 3670, is an example of a restrictive enactment which resulted in a retreat of foreign investments.

70. Art. 2(1)(a), [1980] C Anales 2585, 2586.

71. *Id.* art. 2(1)(b).

72. Decree of Jan. 27, 1981, No. 103, art. 1 [1981] A Anales 261, 261.

73. Art. 2(2), [1980] C Anales 2585, 2586.

74. *Id.*

Third, a *domestic enterprise of foreign capital* means an enterprise domiciled in Argentina in which either: (1) forty-nine percent or more of the capital is owned directly or indirectly by natural or juridical persons domiciled abroad; or (2) natural or juridical persons domiciled abroad have the necessary voting power to prevail in stockholders' or partners' meetings.⁷⁵ The Decree defines this requisite voting power as fifty percent or more of the total number of votes corresponding to the stock in circulation or to existing shares.⁷⁶

Fourth, a *domestic enterprise of national capital* is an enterprise domiciled in Argentina in which at least fifty-one percent of the capital is owned by natural or juridical persons who are domiciled in Argentina and who have the voting power necessary to prevail in stockholders' or partners' meetings.⁷⁷ The necessary voting power is the same as that required for domestic enterprises of foreign capital: direct or indirect control of fifty percent or more of all votes.⁷⁸

A special situation could arise if the local investors, although holding a majority of votes, nonetheless lost control of the enterprise by remaining absent from regular meetings. Article 3 of the Decree specifically anticipates this situation.⁷⁹ When in three consecutive years, or in a majority of meetings during five consecutive years, local investors' votes are less than those of foreign investors, the enterprise's nature may be reclassified.⁸⁰ This reclassification

75. *Id.* art. 2(3).

76. Art. 2, para. 2, [1981] A Anales 261, 261.

77. Art. 2(4), [1980] C Anales 2585, 2586.

78. Art. 2, paras. 2-3, [1981] A Anales 261, 261.

79. *Id.* art. 3.

80. This is established in the Decree:

When the number of votes held by foreign investors who attend the meetings of shareholders or of partners is higher than the votes of the remaining shareholders or partners present, and if this condition prevails in all the assemblies or meetings of partners held during three consecutive years, or in a majority of the meetings held during five consecutive years, the Enforcing Authority, after careful consideration, may decide that a firm that meets the conditions stipulated in article 2(b) of the present decree is a foreign capital firm. In such case the Enforcing Authority shall proceed to reclassify the firm and the new classification shall be effective as from the date on which this decision was adopted, until the firm in question, its shareholders, or partners can prove that the conditions leading to the reclassification have changed. The respective three and five years periods referred to in this article shall be counted as from the first assembly or partner's meeting held after the publication of Decree 283/77 in which the number of votes by the foreign investors present is greater than the votes of the rest of the attending shareholders or partners.

Id.

falls within the power of the Undersecretariat of External Investments, who "after careful consideration,"⁸¹ may alter the firm's status from a domestic enterprise of national capital to a domestic enterprise of foreign capital.⁸² The reclassification cannot have any retroactive effects,⁸³ and the firm may petition for reclassification to its original status when the abnormal situation ceases.⁸⁴

What characterizes an investor as foreign is the concept of domicile⁸⁵ rather than that of nationality. For example, an Argentine investor domiciled abroad would be "foreign" for the purposes of the Act.

The key question, therefore, is the definition of domicile. The Argentine Civil Code considers natural persons to be domiciled where they have established their principal place of residence.⁸⁶ Juridical persons, however, have their domicile at the place specified in their articles of incorporation, or where their administration or board of directors is located.⁸⁷ In the case of a corporation with several branches, each branch is deemed to be the corporation's

81. *Id.*

82. *Id.*

83. *Id.*

84. Frequently, a domestic enterprise of national capital receives a foreign investment that turns the company into a domestic enterprise of foreign capital. The procedure is to apply to the authorities for approval of such investments, which is usually granted. The Undersecretariat of External Investments justifies its approval by stating in the pertinent Resolution that the new investment "will allow the recipient enterprise to strengthen its economic-financial structure," Resolution of Dec. 9, 1981, No. 42/81, Boletín Oficial Dec. 9, 1981, "will make an increase of exports possible for the recipient enterprise, and will contribute with the necessary resources to attain its economic consolidation," Resolution of Feb. 19, 1982, No. 42/82, Boletín Oficial Feb. 19, 1982, or "will make the newest publicity techniques available, allowing access to the investor's important list of clients," Resolution of Mar. 3, 1982, No. 64/82, Boletín Oficial Mar. 3, 1982. These examples are indicative of the general trend.

85. *See supra* note 73.

86. Article 89 of the Argentine Civil Code states, in part, as follows: "The actual domicile of persons is the place where they have established their principal place of residence and business." *CÓDIGO CIVIL* art. 89 (Lajouane ed. 1974) (Argen.).

87. Article 90 of the Code provides, in part, that:

The legal domicile is the place where the law presumes, without evidence to the contrary being admissible, that a person resides permanently for the exercise of his rights and the fulfillment of his obligations, even though not actually there present, thus:

.....
3. The domicile of corporations, establishments and associations authorized by law or by government, is the place where their administrative or managing offices are situated, if under their by-laws or the authorization given them, they do not have a stated domicile.

Id. art. 90. For a translation of the Civil Code, see F.L. JOANINI, *THE ARGENTINE CIVIL CODE* (1917).

special domicile for the specific activities which take place at the branch.⁸⁸ This does not necessarily mean, however, that a foreign branch of an Argentine corporation is similarly considered as the corporation's special domicile. Such situations have not been resolved.

The time period necessary to establish an Argentine domicile is not well defined. By analogy to article 26 of the Profit Tax Law,⁸⁹ however, "individuals who live in the country for more than six months during the fiscal year shall be considered as resident in the Republic."⁹⁰ This analogy, though not legally binding, provides a useful guideline.

C. *Methods of Investing*

Article 3 of the Act sets forth six possible methods of investing, as well as a catch-all clause.⁹¹ These methods are:

- (1) freely convertible foreign currency;
- (2) capital goods, spare parts and accessories;
- (3) profits, or capital in Argentine currency, belonging to foreign investors;

88. *CÓDIGO CIVIL* art. 90, para. 4 (Lajouane ed. 1974) (Argen.).

89. Profit Tax Law, created by the Law of December 29, 1973. No. 20,628, [1974] A *Anales* 66.

90. Article 26 of the Profit Tax Law was amended by the Law of January 5, 1977. No. 21,481, [1977] A *Anales* 54. For a discussion of article 26, see Pazos, *Concepto de residencia. Actividades desarrolladas en el exterior*, [1982] A *IMPUESTOS* 893.

91. Article 3 of the Act states:

Foreign investments can be made in the form of:

1. Freely convertible foreign currency;
2. Capital goods, spare parts and accessories that may only be disposed of in the conditions established for each case in the decree in which the investment is approved;
3. Profits or capital in local currency, which are the property of foreign investors, and provided that they can be legally transferred abroad, except when they are subject to general restrictions imposed on such transfers by the Executive Authority, as provided in articles 12 and 14 of this law;
4. Capitalization of foreign loans in freely convertible foreign currency;
5. Intangible assets, in accordance with the specific legislations;
6. Other forms of investments which have been approved by the Enforcing Authority or stipulated in special or promotional regimes. Foreign investments made in accordance with this law shall be registered in the foreign currency in which they have been effected and in the conditions established in regulations that also provide for appraising the assets referred to in paragraphs 2 and 5 above, as well as the conditions for approving investments referred to in paragraph 6.

Art. 3, [1980] C *Anales* 2585, 2586.

- (4) capitalization of foreign credits in freely convertible foreign currency;
- (5) intangible assets;
- (6) any other type of investment provided for in special promotional statutes; and
- (7) any other type of investment authorized by the Undersecretariat of External Investments.

The investor can combine any of these possibilities.

The Government eagerly seeks and easily approves investments in foreign currency, although the Decree states that loans of foreign currency shall not be construed as investments.⁹² Projects financed with foreign currency are usually approved by the Undersecretariat of External Investments. After the investor's application is accepted, a resolution is issued accepting the proposal on the grounds that "it will allow strengthening of the economic-financial structure of the recipient enterprise," or for a similar reason.⁹³

Components of investment through capital goods, spare parts and accessories, the second method, are valued at the current export price of the country of origin or at a local market price, whichever is lower.⁹⁴ Proof of value, such as receipts, must be presented on request.⁹⁵ The Undersecretariat of External Investments may change the estimated value if it has been distorted.⁹⁶ The Undersecretariat may also limit the size of the investment to

92. Art. 4, [1981] A Anales 261, 261.

93. See, e.g., Resolution of Dec. 9, 1981, No. 41/81, Boletín Oficial Dec. 9, 1981; Resolution of Dec. 9, 1981, No. 42/81, Boletín Oficial Dec. 9, 1981. See *supra* note 84.

94. Article 5 of the Decree states that:

New or second hand capital goods, spare parts and accessories included in the investment shall be valued at the current export price of such goods in their country of origin, or at the local market price in that country, if this should be less. The Enforcing Authority can demand proof that the price stated by the investor is correct. The Executive Authority or the Enforcing Authority, as may be the case, shall include a provisional estimated value of these goods in the instrument in which the investment is approved. Within thirty (30) days of being informed of the arrival of these goods in this country, of the views of the customs authorities, or of the expiration of the period granted the latter for making known their views, as may be the case, the Enforcing Authority can change the estimated price of these goods and the new value shall be recorded in the register of investments. Only those spare parts and accessories considered by the Enforcing Authority to be reasonably necessary for normal operations shall be approved as investment.

Art. 5, [1981] A Anales, 261, 262.

95. *Id.*

96. *Id.*

those spare parts and accessories considered "reasonably necessary."⁹⁷

Investments in Argentine currency must satisfy two requirements. They must belong to foreign investors and they must be legally transferable abroad when converted into foreign currency.⁹⁸ In practice, therefore, such investments are very similar to those in foreign currency.

Investments in Argentine currency are available to be reinvested but may not be repatriated.⁹⁹ For example, an unregistered investor may find his remittances abroad blocked by supervening restrictions on exchange operations.¹⁰⁰ When Argentina has difficulty in paying its foreign debt, a temporary suspension on remittances abroad may also affect registered investors.¹⁰¹ In these cases the foreign investor may choose to invest nonconvertible Argentine currency, thereby preserving the foreign origin of such currency. When circumstances change and conversion is allowed, the investor may proceed accordingly.

The capitalization of foreign credits is subject to two tests. First, the Undersecretariat of External Investments must evaluate and approve the need, convenience and capitalization of the loan.¹⁰² Approval is based solely on economic, business-oriented considerations.¹⁰³ Second, repayment of the loan by remitting foreign currency abroad must be possible under Central Bank regulations.¹⁰⁴

97. *Id.*

98. *Id.* art. 8.

99. *Id.* art. 9.

100. Art. 12, [1980] C Anales 2585, 2588.

101. *Id.* art. 14. See *infra* notes 127, 137 and accompanying text.

102. "For the purposes of article 3(4) of the Law, the authority who must approve the investment will evaluate the reasons that motivated the loan—which will constitute a decisive factor—and consider the need and desirability of its capitalization." Art. 11, para. 1, [1981] A Anales 261, 263.

103. Expressing its approval, the Undersecretariat of External Investments has issued resolutions in individual cases stating reasons such as: "the project has been favorably assessed, since it will allow strengthening of the recipient enterprise's economic-financial structure, and avoid the outflow of foreign currency to cancel debts abroad," Resolution of Feb. 26, 1982, No. 63/82, 1982 BOLETÍN SEMANAL DE ECONOMÍA 478, or "the project has been favorably assessed since it will avoid the outflow of foreign currency to cancel debts abroad and will improve the economic-financial structure of the recipient enterprise, making it possible to set up its industrial plant," Resolution of Feb. 26, 1982, No. 65/82, 1982 BOLETÍN SEMANAL DE ECONOMÍA 479.

104. Art. 11, para. 2, [1981] A Anales 261, 263.

Intangible assets (*bienes inmateriales*) are subject to specific enactments. One recent specific enactment is Law 22,362,¹⁰⁵ passed in 1981, relating to trademarks.¹⁰⁶

Investments channeled through promotional statutes are those based on certain enactments directed to improve a certain economic activity, or a certain geographical area. Examples of such enactments are The Industrial Promotion Act,¹⁰⁷ and Provincial Law 8,478.¹⁰⁸

The Undersecretariat of External Investments retains the power to authorize forms of investment other than those referred to above.¹⁰⁹ This procedure affords great flexibility since the authorities can evaluate the convenience of each proposal individually. It is significant that no form of investment is generally banned. The only statutory limitation is on the investment's subject matter, which must be an economic activity, not on the method of investing.¹¹⁰

Articles 17 and 18 of the Act state two broad principles. First, the investor may use any of the corporate forms allowed by Argentine law.¹¹¹ Second, domestic enterprises of foreign capital may obtain credit from local financing institutions on the same terms as domestic enterprises of national capital.¹¹²

IV. ADMINISTRATION OF THE ACT

A. Role Played by the Undersecretariat of External Investments

The Undersecretariat of External Investments (the Undersecretariat) is a government office whose function is defined in article 9

105. Law of Feb. 1, 1981, No. 22,362, [1981] A Anales 58.

106. For a brief English outline of Law 22,362, see Etcheverry, *New Trademarks Law in Argentina*, 9 INT'L BUS. LAW. 349 (1982).

107. Law of July 27, 1977, No. 21,608, [1977] C Anales 2513.

108. Provincial Law of Sept. 6, 1979, No. 8,478, [1979] C Anales 3536. This law was reenacted to promote industry in the province of Santa Fe.

109. Art. 3(6), [1980] C Anales 2585, 2586, translated *supra* at note 91. Subsecretariat of Economy Resolution of June 29, 1982, No. 106, 1982 Boletín Informativo (No. 23) 38 (to be reported in 1982 Anales), incorporated external bonds as an admissible method of foreign investment. See *infra* note 164 and accompanying text.

110. See *supra* note 72 and accompanying text.

111. Art. 17, [1980] C Anales 2585, 2590. The most important single enactment of Argentine corporate law is the Law of April 25, 1972, No. 19,550, [1972] B Anales 1760, which has been amended many times. The main corporate structures allowed in Argentina and most likely to interest the foreign investor are the *sociedad anónima* (corporation), and the *sociedad de responsabilidad limitada* (limited liability company). Instead of setting up a new corporation the foreign investor may choose to open a branch in Argentina.

112. Art. 18, [1980] C Anales 2585, 2590.

of the Act and further delineated in the Decree.¹¹³ One of the Undersecretariat's most important tasks is the initial evaluation of certain proposed foreign investments.¹¹⁴ The Undersecretariat is likely to be the first authority with whom the prospective investor makes official contact. It is also a consulting office, giving advice to investors about proceedings conducted before it. In addition, the Undersecretariat may publicize abroad the legal system governing foreign investments in Argentina and control the accuracy of sworn statements submitted to it.¹¹⁵

In general, the Undersecretariat is responsible for almost all administrative matters which are related to foreign investments and which do not fall under the Executive's exclusive jurisdiction. The Undersecretariat is the official link between the foreign investor and the rest of the administration. Even in the case of "automatically registered" investments covered in article 5,¹¹⁶ the foreign investor must file with the Undersecretariat for his investment to be "registered."¹¹⁷ Although such an investment cannot be rejected by the authorities, it must be reported to them in order to obtain registration benefits.¹¹⁸

The Undersecretariat has devised standard forms available at the Ministry of the Economy for use in the following circumstances: new investments,¹¹⁹ reinvestment of profits,¹²⁰ new investments made in freely convertible foreign currency,¹²¹ capital investments in freely convertible foreign currency,¹²² cancellation of registered

113. Arts. 38-41, [1981] A Anales 261, 265-67.

114. Proposals for foreign investments that are not automatic and that do not require authorization from the Executive, must be presented to the Undersecretariat, in accordance with certain rules which request data from the prospective investor. These rules are condensed in Undersecretariat Resolution of January 13, 1981. No. 153/80, [1981] A Anales 405. Resolution 153/80 states that photocopies that are submitted must be certified by a notary public. This requirement has, however, been cancelled by Ministry of Economy Resolution of January 5, 1982, No. 1, [1982] BOLETÍN SEMANAL DE ECONOMÍA 68, which only requires a sworn statement as to the authenticity of the photocopies.

115. The Decree provides that the "Enforcing Authority may publish information on the different aspects of foreign investment, provided that such information is of a general nature or includes additional data on different items, sectors or regions." Art. 40(e), [1981] A Anales 261, 267.

116. See *infra* note 137 and accompanying text.

117. Arts. 59-64, [1981] A Anales 261, 269-71.

118. *Id.*

119. Arts. 4, 6, [1980] C Anales 2585, 2586-87.

120. *Id.* art. 5(1).

121. *Id.* art. 5(2).

122. *Id.* art. 5(3).

investments, and change of ownership in company stock. Previously, matters had to be reported and filed through a writ. The use of forms reduces mistakes and saves time.

All information received by the Undersecretariat is strictly confidential.¹²³ It can be disclosed only upon a court's subpoena¹²⁴ or upon petition by the Central Bank, the *Instituto Nacional de Tecnología Industrial* or national ministries.¹²⁵ The information must be absolutely necessary for the party requesting it. Disclosures to the General Tax Bureau pose the greatest risks. These disclosures, however, can only take place with regard to a specific taxpayer. An investigation against the taxpayer must be in progress, and the required information must be indispensable to the investigation.¹²⁶

123. The requirement of confidentiality is set out in article 40 of the Decree which states:

The information received by the Enforcing Authority as a consequence of its functions shall be considered strictly confidential.

The officials and personnel of the Enforcing Authority shall keep such information in strictest confidence, except in the following cases:

(a) When the information is required by a judge of the Republic, in any instance, court or jurisdiction, in accordance with the respective procedural laws;

(b) when the information is required by the Central Bank of Argentina for the performance of its functions;

(c) when the information is required by the competent Registry in the sphere of technology transfer for the performance of its functions;

(d) when the information is required by the General Tax Bureau in accordance with Law 11,683 (text enacted in 1978 and amendments thereto), in the following conditions:

I) It must refer to a specific taxpayer.

II) A tax investigation of this taxpayer must be in progress.

III) The information required must be needed for this investigation;

(e) The information required by national ministries when it is indispensable for the performance of their functions.

Requests for information referred to in paragraphs (b), (c) and (e) must be countersigned by the heads of the respective agencies.

Receivers of this information will keep it confidential in all cases, except when its divulgence is indispensable for the purposes for which it has been requested.

Art. 40, [1981] A Anales 261, 266-67.

124. *Id.* art. 40(a).

125. Law of December 23, 1971, No. 22,520, 1982 Boletín Informativo (No. 1) 4 (to be reported in 1982 Anales), has created ten different national ministries: interior, foreign relations and worship, justice, defense, economy, public works, education, labor, public health and environment, and social action (welfare).

126. Art. 40(d)(iii), [1981] A Anales 261, 266.

B. *When Governmental Approval Is Necessary*

Foreign investments can be categorized in three ways according to the type of approval which is required: (1) those investments requiring previous authorization from the Executive; (2) those that can be registered automatically, without any special authorization; and (3) those requiring previous authorization from the Undersecretariat. The different types of approval are related to the nature and size of investments.

The most sensitive items are within the category requiring previous authorization from the Executive.¹²⁷ This category includes defense and national security,¹²⁸ public service, communications, energy,¹²⁹ and insurance and financial institutions.¹³⁰ Also in this category are investments where the investors' foreign domicile would turn a domestic enterprise of national capital into one of foreign capital.¹³¹ In addition, four other cases are included in this group:¹³² goodwill¹³³ and assets of certain shops bought for more than U.S.\$10,000,000; all investments of more than U.S.\$20,000,000; investments made by a foreign state or a foreign person of a public character;¹³⁴ and investments requiring any special state benefits.¹³⁵ The Decree has introduced a new group of

127. Art. 4, [1980] C Anales 2585, 2586-87.

128. *Id.* art. 4(1)(a). For the purposes of the Act, investments in "defense and national security" include naval and aeronautical construction, aerospace research and development, atomic energy and materials directly related to military or police activities. Art. 16, [1981] A Anales 261, 263.

129. Art. 4(1)(b)-4(1)(d), [1980] C Anales 2585, 2586. Investments in "energy" include the exploration and exploitation of liquid and gaseous hydrocarbon and coal deposits, as well as obtaining and conveying electric power when related to a public service. Art. 18, [1981] A Anales 261, 263.

130. Art. 4(1)(f), [1980] C Anales 2585-2586. For the purposes of the Act, "financial institution" means an entity subject to Law of February 21, 1977, No. 21,526, [1977] A Anales 121, as amended by Law of January 26, 1982, No. 22,529, 1982 Boletín Informativo (No. 3) 5 (to be reported in 1982 Anales). Art. 19, [1980] C Anales 2585, 2590. For an English translation of Law 21,526, as amended, see [Jan.-June 1982] REV. RIVER PLATE 132, 175, 217. Thus, the term refers principally to banks and any other firm that offers loans on a regular basis.

131. Art. 4(2), [1980] C Anales 2585, 2586-87.

132. *Id.* art. 4(3)-4(6).

133. The goodwill value shall be the price shown in the contractual documents, calculated as from the date when they were issued. Art. 21, [1981] A Anales 261, 264.

134. Except in relation to international organizations of which Argentina is a member. *Id.* art. 28.

135. This only applies when such benefits are a condition for carrying out the investment. *Id.* art. 26.

investments within this category. These investments are in the areas of metallurgy, aluminum production, and mining, with the exception of third class mines.¹³⁶ The Executive is not given a time limit within which to allow or reject the investment.

The second type of foreign investments, those not requiring special authorization, can be registered automatically.¹³⁷ Investments falling within this category are the following:

- (1) reinvestment, in the same domestic enterprises, of profits derived from investments of foreign capital duly registered;¹³⁸
- (2) new investments in freely convertible foreign currency, not exceeding thirty percent of the enterprise's registered foreign capital,¹³⁹ or made by foreign investors exercising their preferential right in domestic enterprises of national capital in order to maintain an equal or lower participation;¹⁴⁰ and
- (3) capital investments in freely convertible currency, up to U.S.\$5,000,000 as long as the investment does not turn the receiving enterprise into a domestic enterprise of foreign capital.¹⁴¹

Investments in the first two categories merit automatic registration even if they fall within a category which requires previous approval from the Executive.¹⁴²

The third category requires previous authorization from the Undersecretariat.¹⁴³ Contained in this category are foreign investments which are not included in either of the other categories. An example would be an investment of over U.S.\$5,000,000 but below

136. Art. 17, [1981] A Anales 261, 263.

137. Art. 5, [1980] C Anales 2585, 2587.

138. This principle shall not apply if the receiving institution is transformed through such reinvestment into a local firm of foreign capital. Art. 29, [1981] A Anales 261, 264. To obtain automatic registration, it must be proved that the local firm is committed to reinvest the profits through, for example, the minutes of a shareholders' meeting. It should also be proved that the reinvestment in question originated from profits derived from a registered investment. *Id.* art. 59(e).

139. In this case, proof of entry of the investment into the country and of its reception by the receiving firm must be furnished. *Id.* art. 59(c). The means of proof most widely used in such context are receipts, sworn statements, or certificates issued by a certified public accountant.

140. Art. 5(2), [1980] C Anales 2585, 2587.

141. *Id.* art. 5(3).

142. *Id.* art. 5(1), (2).

143. *Id.* art. 6.

U.S.\$20,000,000 and not falling within articles 4 or 5 of the Act. In urgent cases the Undersecretariat will allow an investor to seek a retroactive approval. The risk is obviously on the investor, but the authorities are usually well-disposed towards granting such approval.¹⁴⁴

By distinguishing between the two different kinds of authorizations and automatic registration, the Act has reached a compromise position, balancing the conflict between excessive and inadequate controls. For instance, investments which require certainty or speed need previous approval by the Executive. In contrast, those which are politically or economically less significant have an automatic right to registration. The middle line is drawn by cases requiring approval from the Undersecretariat.

V. INVESTING BY PURCHASING SHARES

The Act also covers the purchase by foreign investors of shares of domestic enterprises quoted on the Argentine stock market.¹⁴⁵ Several features set this method apart from the others. For example,

144. This method of investment is specifically covered by article 7 of the Act, although it does not follow the general rules. *Id.* art. 7. For instance, in one case, the Undersecretariat took into consideration that "the investments were carried out without previous approval due to the urgent necessity to allow the recipient enterprise enough money to overcome financial difficulties" and authorized such investment, on the general grounds that "it had strengthened the recipient enterprise's economic-financial structure, allowing it to increase its activity." See Resolution of Feb. 19, 1982, No. 39/82, Boletín Oficial Feb. 19, 1982. Another example is the Subsecretariat's Resolution of April 7, 1982, in which a capitalization of a foreign credit, already accomplished, was retroactively authorized in view of "the foreign investor's urgent necessity in maintaining his participation in the recipient enterprise" and because such investment "contributed to strengthen the economic-financial structure of the recipient enterprise, avoiding the outflow of foreign currency to cancel debts abroad." 1982 BOLETÍN SEMANAL DE ECONOMÍA 918-19. The Executive, through Decree 845 of 1982, approved a foreign investment related to insurance, although it took place before the competent administrative agency (*Superintendencia de Seguros de la Nación*) had authorized it. 1982 BOLETÍN SEMANAL DE ECONOMÍA 1046. This Decree stated that since the investment had been favorably considered by the Undersecretariat, it deserved approval. *Id.*

145. Article 7 of the Act provides:

Approval shall not be required for the purchase by foreign investors of the shares of local firms quoted on domestic stock exchanges, made in accordance with the following provisions nor will they be registered in the Foreign Investments Registry:

1. If, as a result of the purchases referred to in this article, the firms are not converted into foreign capital local firms.
2. When the value of the shares held by a foreign investor as a consequence of such purchases does not exceed two million U.S. dollars (U.S.\$2,000,000), or their equivalent in other currency, or two percent (2%) of the capital of each firm in which such investment was made.

these operations lack the right to be registered with the Undersecretariat.¹⁴⁶ Whatever the amount involved or the activity in question, they do not require governmental authorization.¹⁴⁷ Moreover, the Special Tax created by article 16¹⁴⁸ is not applicable.¹⁴⁹

Four restrictions, violation of which makes the operation null and void, are stated in the Act:

- (1) The purchase of shares must not convert the domestic enterprise into one of foreign capital.¹⁵⁰
- (2) Individual foreign investments must not exceed U.S.\$2,000,000, or represent over two percent of the receiving enterprise's capital.¹⁵¹
- (3) All foreign investments must not exceed twenty percent of the capital of any receiving enterprise.¹⁵²
- (4) The Undersecretariat must be notified of any purchase of shares by foreign parties.¹⁵³

The Decree provides a solution in the interesting case where a person domiciled abroad buys shares, stocks or equities from a

3. When the total shares purchased by foreign investors under this article do not exceed twenty percent (20%) of the capital of the firm in which such investment was made.

4. The Enforcing Authority shall note and control the purchase of shares made under the terms of this article, in accordance with the standards to be established in the regulations.

For all legal purposes the foreign investments referred to in this article that fail to comply with the provisions hereof, or the provisions made in the Regulating Decree, shall be considered null and void.

Art. 7, [1980] C Anales 2585, 2587-88.

146. *Id.*

147. There is, however, some control on the information related to these operations. Article 34 of the Decree states that transactions of this kind must be carried out through duly authorized stock markets, which in their turn must "communicate such operations to the institutions designated for this purpose by the Enforcing Authority." Art. 34, [1981] A Anales 261, 265. In connection with it, the Undersecretariat has appointed the *Caja de Valores S.A.* as a recipient of such information. This institution must provide the Undersecretariat with a breakdown of share transactions where foreign investors took part, either as sellers or purchasers. Details, such as the foreign investor's name and address, description of shares in question and price in United States dollars must be included. *See* Undersecretariat's Resolution of Mar. 16, 1981, No. 21/81, Boletín Oficial Mar. 16, 1981.

148. *See infra* note 188 and accompanying text.

149. Art. 16(1), [1980] C Anales 2585, 2589.

150. *Id.* art. 7(1).

151. *Id.* art. 7(2).

152. *Id.* art. 7(3).

153. *Id.* art. 7(4).

foreign investor also domiciled abroad.¹⁵⁴ In this situation, the purchase price is considered to be the amount which is actually received in Argentina.¹⁵⁵ Thus, that part of the purchase price deposited abroad would decrease the purchase price for the purposes of the Act.

VI. REMITTANCE OF PROFITS

Foreign investments may be either registered or unregistered.¹⁵⁶ Registered foreign investments are registered either automatically or with previous governmental approval.¹⁵⁷ Registration is obtained from the Undersecretariat.¹⁵⁸ It is optional only for the investor who can, if he chooses, make an unregistered investment. The risk of this procedure is that repatriation of profits and capital is guaranteed only for registered investments.¹⁵⁹ Consequently, registration is strongly advised for all investments.¹⁶⁰ The following material discusses registered investments which are, it is suggested, the soundest and most representative method of investing.

The Act establishes the principle of the investor's right to free remittance of net and liquid profits.¹⁶¹ This right may be temporarily suspended by the Executive, but only when difficulties arise in paying the nation's foreign debts.¹⁶² Even then, the foreign investor need not wait for his profits to be unfrozen. Under article 14 of the Act, the investor can obtain an amount equivalent to his profits in external bonds at the interest rate prevailing in the international

154. Art. 14, [1981] A Anales 261, 263.

155. An exception could arise in the case of an investment in intangible assets. *See supra* note 106 and accompanying text. Here, restrictions to capital repatriation would not be effective since the capital is intangible.

156. It should be emphasized that registration is not mandatory, but just the investor's prerogative. *See G. CABANELLAS, DERECHO DE LAS INVERSIONES EXTRANJERAS* 161 (1979).

157. Arts. 4-6, [1980] C Anales 2585, 2586-87.

158. *Id.* art. 11.

159. *Id.* art. 14.

160. Registration is advisable since it guarantees repatriation of capital and profits. It also places the foreign investor in a more favorable position in general.

161. Article 12 of the Act states:

Foreign investors may transfer abroad the net and liquid profits obtained from their investments and may repatriate their investments, unless the Executive Authority should impose general restrictions on such transfers, in which case only foreign investors registered in accordance with this Law shall enjoy such rights, as provided in Articles 13 and 14 of this Law.

Art. 12, [1980] C Anales 2585, 2588.

162. *See infra* note 163.

market.¹⁶³ The sale value of these bonds is usually greater in Argentina (payable in local currency), than abroad (payable in foreign currency).¹⁶⁴ Provided that the purchaser agrees, the holder can legally sell such bonds in Argentina, for dollars or other foreign currency.¹⁶⁵

The Anglo-Argentine confrontation over the Malvinas/Falkland Islands led the Argentine government to invoke article 14 of the Act for the second time.¹⁶⁶ This was done through Decree 787,¹⁶⁷ issued by the Executive on April 21, 1982. The decree alleged difficulties in paying the nation's foreign debt and thus temporarily suspended the right of registered foreign investors to remit their profits abroad and to repatriate their investments in foreign currency.¹⁶⁸ Under article 14 of the Act, however, investors

163. Article 14 of the Act states as follows:

The right to transfer profits and repatriate investments enjoyed by registered investors by virtue of this Law may only be suspended—and if so, only by the Executive Authority—while there are difficulties in connection with foreign payments. In such case, foreign investors shall have the right to receive for the sums they wish to transfer as profits, the equivalent of such sums in foreign debt, public bonds in foreign currency, at the international rate of interest, against the payment of the equivalent sum in local currency.

Art. 14, [1980] C Anales 2585, 2589.

164. The Decree states that the bonds in question must be given to the investor within 30 consecutive days of being requested. Art. 66, [1981] A Anales 261, 272. "Consecutive" here means that Saturdays, Sundays and national holidays are included in the count. Interest accrued until the delivery date shall be paid as well. *Id.* These bonds were issued for the first time in 1966 and later in 1977, 1980, 1981 and 1982. See Central Bank Communiqué of May 5, 1982, No. A 125, 1982 Boletín Informativo (No. 18) 25 (to be reported in 1982 Anales). They are issued by the Central Bank and guaranteed by the Argentine Republic. They bear an interest over LIBOR, payable in foreign currency, either in New York, Frankfurt or Zurich. External bonds can be freely exported from and imported into Argentina. During April 1982, external bonds of the 1981 series were being sold at 14,500 Argentine pesos to one United States dollar. This included a premium of 4.55% due to accrued interest. The official exchange rate was 11,900 Argentine pesos to one United States dollar. For a commentary in English, see *Argentina Curbs Outflows to Protect Reserves as Dispute with UK Worsens*, 1982 BUS. LATIN AM. 133.

165. This is not expressly authorized by the law, but neither is it forbidden.

166. The first time that the transfer of capital or profits was suspended under Law 21,382, due to a shortage of hard currency, occurred through Decree of October 6, 1976. No. 2,253, [1976] D Anales 2928. Five months later this suspension was lifted by Decree of March 16, 1977, No. 627, [1977] A Anales 348.

167. Decree of Apr. 23, 1982, No. 787, 1982 Boletín Informativo (No. 15) 13 (to be reported in 1982 Anales).

168. The relevant parts of Decree 787 state as follows:

Article 1—The right to transfer profits and to repatriate investments, enjoyed by foreign investors, registered according to Law 21,382 and its amendments, is hereby suspended.

were allowed to acquire external bonds (*Bonos Externos de la República Argentina*) instead.¹⁶⁹

Argentina's difficulty in paying its foreign debt apparently surpassed the foreign investment threshold, which prompted the Executive to enact Decree 786.¹⁷⁰ This decree allows cancellation of private foreign debts by payment in external bonds, provided that the foreign creditor agrees to this method of payment.¹⁷¹

When exchange transactions and the transfer of foreign currency abroad are unrestricted, the investor may remit his profits freely. But when a system of exchange control is in force, certain formalities must be met. These are specified by the Decree, which requires the following:

(1) A certificate must be issued by a certified public accountant, stating that the receiving firm has complied with all aspects of the Act, tax liabilities, labor laws and social security obligations. The certificate must also state that the profits in question are derived from a recorded investment;¹⁷²

(2) The transfer, as a rule, shall be made in the same currency as that of the original investment;¹⁷³ and

(3) If any government payments, such as tax liabilities or social security charges are due, the transfer of profits shall be

Article 2—Foreign investors shall have the right to receive the equivalent to the amount to be transferred in bonds of the external public debt, called "External Bonds of the Argentine Republic," against payment of the corresponding sum in national currency, at the time and in the manner determined by the Central Bank of Argentine Republic.

Article 3—The suspension established in Article 1 shall remain in force as long as the circumstances that originate this measure subsist, and it can be cancelled by a resolution from the Ministry of Economy.

Id. arts. 1-3.

169. Unregistered foreign investors were also able to buy external bonds, remaining in the same situation as those who were duly registered. The only difference is that the latter can buy such bonds directly from the government at the official rate, which is lower than the one offered by secondary markets. Unregistered investors can only use the latter method.

170. Decree of Apr. 23, 1982, No. 786, 1982 Boletín Informativo (No. 15) 13 (to be reported in 1982 Anales).

171. Decree 786 states:

The cancellation of foreign debts due to profits, dividends, royalties and technical assistance can be made, as long as the present situation in the external sector subsists, through delivery of titles of the external public debt, denominated External Bonds of the Argentine Republic, issued or to be issued by the Executive.

Id. art. 1.

172. Art. 65(a), [1981] A Anales 261, 271.

173. *Id.* art. 65(b).

suspended until the outstanding debt is paid.¹⁷⁴ This restriction is lifted upon payment. If the foreign investor receives his profit and decides to retain it in the country without reinvesting it, the Decree imposes on the investor the duty to notify the Foreign Investments Registry within sixty days¹⁷⁵ of receiving such profits.¹⁷⁶

VII. REPATRIATION OF CAPITAL

Invested capital can be repatriated only three years after it is brought into Argentina, provided that a longer time was not set by the authorities at the time the proposal was approved.¹⁷⁷ Article 14 of the Act applies to the investor's right of repatriation as well as to the right of free remittance. Suspension by the Executive and methods for avoiding suspension,¹⁷⁸ as discussed previously,¹⁷⁹ therefore affect both rights equally.

Another trait common to profit and capital repatriation is that both will be suspended if the foreign investor does not comply with the law.¹⁸⁰ In this instance, the right to register investments is also automatically suspended.¹⁸¹ However, as soon as the investor demonstrates compliance with the law, the right to repatriate profits or capital once again vests, together with the right to automatic registration.¹⁸²

The formalities needed to repatriate foreign capital are very much like those needed to repatriate profits.¹⁸³ The Decree requires a certificate signed by a certified public accountant in terms similar to those explained above.¹⁸⁴ Also, as in the case of profits, these

174. *Id.* art. 65(d).

175. Conflicting rules exist regarding the computation of time periods. "The time periods indicated by laws or by the courts, or by government decrees, shall include national holidays, unless the period in question refers to working days explicitly." *Código Civil* art. 28 (Lajouane ed. 1974) (Argen.). In spite of this, Law of April 27, 1972, No. 19,549, [1972] B Anales 1752, also known as *Ley de Procedimientos Administrativos* (Administrative Procedure Act), states that time periods "shall be measured in working days unless there is a legal provision to the contrary." *Id.* art. 7. Of these two opposing principles, Law 19,549 prevails over the Civil Code because it is a *lex specialis*.

176. Art. 65(c), [1981] A Anales 261, 271.

177. Art. 13(1)(a), [1980] C Anales 2585, 2589.

178. *Id.* art. 14.

179. *See supra* text accompanying notes 163-64.

180. Art. 15, [1980] C Anales 2585, 2589.

181. *Id.*

182. *Id.*

183. Article 67, [1981] A Anales 261, 272, makes the rules for transfer of profits subsidiarily applicable.

184. *Id.* art. 67(a).

regulations are applicable only when a system of exchange controls is in operation.¹⁸⁵

The Decree anticipates situations where repatriation of capital does not involve the transfer of foreign currency.¹⁸⁶ For instance, the repatriation of machinery or equipment does not need previous authorization. However, the investor must notify the Foreign Investment Registry within sixty days from the time such repatriation takes place.¹⁸⁷

VIII. SPECIAL TAX REGULATIONS

Article 16 of the Act creates a special tax on additional benefits.¹⁸⁸ The tax must be paid, after deducting the regular Argentine income tax, on those profits remitted abroad which are derived from foreign registered investments.¹⁸⁹ The following table sets forth the tax burden:

| <u>Percentage of Profit Paid in Relation to the Invested Capital</u> | <u>Applicable Rate¹⁹⁰</u> |
|--|--|
| From 12% upwards, and up to 15% | 15% |
| From 15% upwards, and up to 20% | 20% |
| From 20% upwards | 25% |

This calculation is made on an annual basis.¹⁹¹

The general concept behind the tax is compensation to the government for the permanent right to repatriate profits. An unregistered investor would not be subject to the tax,¹⁹² but his right to

185. Otherwise, in the absence of exchange controls, nothing would bar the remittance abroad of foreign currency, whether profits or capital.

186. Art. 67(h), [1981] A Anales 261, 273.

187. *Id.*

188. In Spanish this tax is called "*impuesto especial a los beneficios adicionales provenientes de inversiones de capital extranjero*," which means "special tax on additional benefits derived from the investment of foreign capital."

189. Art. 16(1), [1980] C Anales 2585, 2589.

190. The applicable rate is levied progressively. In this sense, the part of profits exceeding each limit shall be taxed accordingly. Art. 69, [1981] A Anales 261, 273.

191. To calculate profits, they shall first be converted into the currency in which the investment was made. *Id.* art. 71. When payment is made in installments, the tax shall be assessed on the total amount, but paid in proportion to each installment. *Id.* art. 72(c).

192. A reason that could block this tax from qualifying as a tax credit, in the sense of section 901 of the United States Internal Revenue Code, is that since registration of foreign investments is not compulsory, the consequent special tax on additional benefits could be considered not compulsory as well.

transfer foreign currency abroad could be curtailed through specific legislation.

The special tax is also an inducement for the reinvestment of profits since it only applies to profits sent abroad. Similarly, neither profits used for new investments, nor those paid to foreign capital local firms are subject to the special tax.¹⁹³

Some observations must be added to this general overview.¹⁹⁴ The special tax on additional benefits is levied on profits paid either in cash or in kind, but stock dividends are not taxed.¹⁹⁵ The payor has the obligation to withhold the required amount of tax and deposit it in a special official bank account.¹⁹⁶

Investors' maneuvers to avoid the tax have been curtailed by the authorities. When available profits, in cash or in kind, are withdrawn from the normal course of business with the beneficiary's tacit or express consent, the authorities consider that payment has been made and apply the tax.¹⁹⁷

Article 16 of the Act also allows a special tax credit for low profits.¹⁹⁸ When profits fall below the twelve percent of nontaxable yearly limit, the difference can be accumulated, as a franchise, for five years running.¹⁹⁹ The Executive may grant exemptions from the tax, or modify the twelve percent limit when circumstances

193. Art. 16(4), [1980] C Anales 2585, 2589.

194. The Argentine system of taxation differs from the United States method in that Argentina only taxes income derived from Argentine sources. A territorial, not a worldwide, system is used. Further, corporate income tax is levied at a flat rate, 33% and 45% of taxable profits applied respectively to domestic corporations and local branches of foreign corporations. Another outstanding feature is that shareholders are not taxed on their dividends, except for shareholders resident abroad who are levied a 17.5% withholding tax. This same tax applies to shareholders resident in Argentina who do not wish to disclose their identity. In any case, when dividends are paid in stock, no tax is due. Several tax incentives are available, for example, for the promotion of industry and mining, and for the development of certain geographical areas. See PRICE WATERHOUSE, CORPORATE TAXES-A WORLD WIDE SUMMARY 1-3 (1982).

195. Art. 68, [1981] A Anales 261, 273.

196. The local firm that received the investment is the withholding agent. The same position is attributed to the intervening exchange broker through which the foreign currency is repatriated. However, the foreign investor is still held responsible for unpaid taxes. *Id.* art. 72(a).

When the investor does not have an Argentine domicile, the withholding agent shall require from him a certificate issued by the Foreign Investments Registry, where particulars of the investment are set forth. *Id.* art. 70(b).

197. Art. 16(1), [1980] C Anales 2585, 2589.

198. *Id.* art. 16(2).

199. *Id.*

justify such a measure. For example, high risk investments or activities that receive special treatment may warrant tax exemptions.²⁰⁰

Article 75 of the Decree addresses the tax on registered foreign investments in the fields of engineering, technical advice and consulting services.²⁰¹ Profits derived from such investments are subject to the tax imposed by article 16 of the Act.²⁰² However, in these cases a flat ten percent rate is levied on paid profits considered independently from the amount of registered capital.²⁰³

A United States-Argentine tax convention and protocol were signed in Buenos Aires, on May 7, 1981.²⁰⁴ Although the treaty and its protocol are not yet in force, the protocol expressly excludes the special tax on additional benefits from the scope of the convention.²⁰⁵

IX. CONTRACTS BETWEEN A FOREIGN PARENT COMPANY AND ITS ARGENTINE SUBSIDIARY

Contracts between a foreign parent company and its Argentine subsidiary are the subject of article 21 of the Act.²⁰⁶ To properly understand article 21, its underlying purpose must be considered.

200. *Id.* art. 16(5).

201. Article 75 of the Decree states that:

Profits on registered foreign investments made in the consulting, engineering and technical advice sectors shall be subject to the tax established in article 16 of the Law, and a uniform 10% rate shall be assessed on paid profits, independently from the proportion of registered capital to which these profits may be equivalent.

Art. 75, [1981] A Anales 261, 274.

202. *Id.*

203. *Id.*

204. The text of the convention and protocol can be found in TAX CONVENTION AND PROTOCOL WITH THE ARGENTINE REPUBLIC, S. EXEC. DOC. No. 44, 97th Cong., 1st Sess. 1 (1981).

205. The treaty applies to the following Argentine taxes: tax on profits, capital gains tax, tax on capital, and tax on net worth, including prepayments of tax made by deduction at source or otherwise. The treaty cannot be invoked to deny taxpayers any benefit they would otherwise be entitled to in either Argentina or the United States.

206. Article 21 of the Act states that:

The legal acts between a foreign capital local firm and the firm that controls it directly or indirectly, or a branch of the latter, shall be considered for all purposes to have been signed between independent parties when the considerations and conditions of such acts are consonant with normal market practices between independent bodies, with the following limitations:

1. Loans: Loans shall be subject to the same principle, except when the Argentine Central Bank had formed an objection to the operation within thirty (30) days of being notified of the terms of the proposed operation on the grounds of the

Article 21 is intended to avoid a situation where, under the appearance of a transaction between two associated companies, the local subsidiary transfers its profits or its capital to the foreign parent.²⁰⁷

In principle, contracts between a foreign parent company and its local subsidiary are perfectly valid. However, some limitations are imposed by the Act, especially the requirement that the transaction be in accord with the normal commercial practices governing independent companies.²⁰⁸ It has been specifically decreed that loans, for example, must be submitted to the Central Bank for approval.²⁰⁹ Loans with an unusually high interest rate to be paid by the Argentine subsidiary are likely to be vetoed.²¹⁰ In any case, if the Central Bank remains silent for thirty days after notification of the terms of the loan, the Bank is deemed to have given its tacit approval and the loan can proceed.²¹¹

If a foreign capital local firm makes a loan to its foreign parent without submitting the loan for the Central Bank's consent, and if the terms of the transaction depart from usual market practices, the remittance of money is considered payment of profits.²¹² Such payments are therefore subject to the tax created by article 16.²¹³ A further express limitation on contracts between local subsidiaries

specific conditions of the operation or the insufficient borrowing capacity of the borrower.

2. Contracts governed by the law on the transfer of technology; The transfer of technology and other services between a foreign capital local firm and the firm that controls it directly or indirectly, or a branch of the latter, which are governed by the law on the transfer of technology, shall be governed by the provisions established for such purposes by that law.

Art. 21, [1980] C Anales 2585, 2591.

207. Although not expressly stated by the law, this is the clear aim of article 21.

208. See *supra* note 206.

209. The only type of loans considered by the Act are reciprocal loan agreements. Art. 82, [1981] A Anales 261, 275.

210. If the loan is vetoed by the Central Bank, and still carried out, it shall be considered for all purposes a capital contribution. As such it can be registered by the investor, provided that the authorities find registration appropriate. *Id.* art. 83, para. 2.

211. Art. 21(1), [1980] C Anales 2585, 2591.

212. This result is mandated by article 83 of the Decree, which provides that:

When a legal proceeding according to Article 21 of the Law fails to comply with the requisites established in the first paragraph of that article, the loans made by foreign capital local firms over and above those that would be consonant with normal market practices shall be considered as payments of profit and, as such, subject to the rules of the Law and to the applicable exchange, tax and social regulations. Art. 83, para. 1, [1981] A Anales 261, 275.

213. *Id.*

and their foreign parents is embodied by Law 22,426,²¹⁴ which requires that approval from the technology authorities be obtained in certain cases.

CONCLUSION

Argentina's enormous natural wealth and resources have largely gone untapped. Political and economic instability coupled with underpopulation have been key contributors to this wasted potential. In an effort to improve this situation, the Act tries to attract foreign investors by being flexible and allowing greater concessions to investors than previous legislation.²¹⁵

It is essential to realize that the Act is only one facet of a coordinated legislative effort. In other fields different acts operate as extensions of the same economic policy. Examples are the Industrial Promotion Law 21,608,²¹⁶ the Law for the Promotion of Mining 22,095,²¹⁷ and the Transfer of Technology Law 22,426.²¹⁸ Other recent enactments have also made a significant impact on international trade.²¹⁹ The common policy linking the Act to these statutes

214. Law of Mar. 23, 1981, No. 22,426, [1981] A Anales 210, applies to those "non-gratuitous juridical acts that have as their principal or accessory object the transfer, assignment, or license of technology or trademarks belonging to persons domiciled abroad, in favor of physical or juridical persons, public or private, domiciled in the country, provided that such acts have an effect in the Argentine Republic." *Id.* art. 1. "Those juridical acts contemplated in article 1, concluded between a local enterprise of foreign capital and the enterprise that controls it directly or indirectly; or concluded with a branch of the latter, shall be submitted to approval by the Implementing Authorities." *Id.* art. 2. According to article 13 of Law 22,426, the Implementing Authorities are the *Instituto Nacional de Tecnología Industrial*, also known by its initials, INTI.

215. For an account of the previous foreign investment system, see Camerini, *Argentina as a Host Country for North American Investments*, 9 INT'L LAW. 407 (1975).

216. Law of July 27, 1977, No. 21,608, [1977] C Anales 2513.

217. Law of Nov. 1, 1979, No. 22,095, [1979] C Anales 3063. For an overview in English, see Abbott, *Mining Promotion Law 22,095 (1979) and Development of the Argentine Mining Industry*, ARGENTINE-AMERICAN BUSINESS REVIEW-DIRECTORY 65-66 (1980). See also Dahl, *Argentina's New Promotional Mining Regime*, 8 BULL. ARGEN. LEGAL DEV. (1980).

218. Law of Mar. 12, 1981, No. 22,426, [1981] A Anales 210.

219. An example is Law of August 6, 1980, No. 22,262, [1980] C Anales 2521, entitled *Ley de Defensa de la Competencia*, which is essentially an antitrust enactment. For a study of Law 22,262, see Cárdenas, *Argentina*, [1982] C1 WORLD LAW OF COMPETITION (MB) Arg. 1-1. Law 22,362, regulating trademarks, has modernized the system and adopted the international classification of Nice. See *supra* note 106. Law of March 23, 1981, No. 22,415, [1981] A Anales 1325, complemented by Decree of May 27, 1982, No. 1,001, 1982 Boletín Informativo (No. 19) 22 (to be reported in 1982 Anales), has enacted the new Customs Code. Law of December 23, 1980, No. 22,354, [1981] A Anales 7 approved the 1980 Montevideo Treaty, Treaty of Montevideo Establishing the Latin American Integration Association, *done*

is the goal of modernizing and strengthening Argentina's economy by promoting free enterprise, upgrading industrial technology and, as a natural consequence, elevating the standard of living.

Unfortunately, these goals have not been attained. The economic plan established in early 1976 has failed even according to government accounts.²²⁰ Most experts lay the blame for this failure on excessive public spending, unprofitable state companies,²²¹ failure to protect local industry by removing trade barriers, and an exchange rate that has crippled exports.²²²

Argentina's present economic situation, particularly its huge external debt²²³ and its new unemployment problem,²²⁴ render foreign investments more necessary than ever. The latest economic measures of devaluing local currency and restricting imports tend to favor the foreign investor.²²⁵ These are the advantages, but political instability remains a persistent risk. Although the political risk might be more apparent than real,²²⁶ it remains an important consideration which lurks in every prospective investor's mind.

August 12, 1980, 20 I.L.M. 672 (1981), and incorporated Argentina into the Latin America Integration Association (LAIA), joining Bolivia, Brazil, Colombia, Chile, Mexico, Paraguay, Peru and Uruguay. *Ratificaciones de Brasil y Perú*, INFORMACIÓN LATINOAMERICANA, May 1982, at 91. LAIA continues the now defunct Latin American Free Trade Association (LAFTA). See Montevideo Treaty, *supra*, art. 54.

220. "The Argentine economy finds itself in a state of destruction without precedence that can really be qualified as a national emergency." N.Y. Times, July 6, 1982, at 1, col. 1 (from the speech given by Mr. J.M. Dagnino Pastore, Minister of Economy at that time).

221. See *supra* note 39.

222. In an effort to redress the exchange imbalance, and to make exports more profitable, several rates of exchange have been established according to the particular kind of export operation or goods exported. See Argentine News-Letter 1 (Aug. 5, 1982) (available at the Argentine-American Chamber of Commerce, Inc., New York).

223. Argentina's external debt has been estimated to be as high as U.S.\$39,000,000,000. See LATIN AM. WEEKLY REP., Aug. 13, 1982, at 11.

224. Unemployment in Argentina has reached 6%. LATIN AM. WEEKLY REP., July 9, 1982, at 4.

225. This is because hard currency has gained colossal strength as a result of the peso devaluation. A hard currency investment in Argentina has a very high acquisitive power, a marked contrast with the situation one year ago. Another consequence is that when converted into dollars, local labor and raw materials become inexpensive, which renders exports more profitable. In addition, because of restricted imports, the foreign investor may have a better local market to service.

226. See *supra* note 62 and accompanying text.