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Global Legal Group

# The International Comparative Legal Guide to: Gas Regulation 2012

## A practical cross-border insight into Gas Regulation work

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**Senior Editor**

Penny Smale

**Managing Editor**

Alan Falach

**Group Publisher**

Richard Firth

**Published by**

Global Legal Group Ltd.  
59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255  
Email: info@glgroup.co.uk  
URL: www.glgroup.co.uk

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# Argentina



Roberto A. Fortunati



Isabel Amadeo

Estudio Beccar Varela

## 1 Overview of Natural Gas Sector

**1.1 A brief outline of Argentina's natural gas sector, including a general description of: natural gas reserves; natural gas production including the extent to which production is associated or non-associated natural gas; import and export of natural gas, including liquefied natural gas (LNG) liquefaction and export facilities, and/or receiving and re-gasification facilities ("LNG facilities"); natural gas pipeline transportation and distribution/transmission network; natural gas storage; and commodity sales and trading.**

Natural gas leads the Argentine energy matrix and its importance has been growing during the last 50 years. Such growth accelerated after the privatisation process of the gas industry, which started in the early 90s. After the referred privatisation, the industry developed dramatically, suffering, however, the strong impact of the 2002 Argentine economic and financial crisis. Since then, the negative impact of price controls for the up-stream sector, as well as the lack of timely adjustment of tariffs for transportation and distribution - whose value deteriorated the US Dollars terms - added to the existence of debts acquired in foreign currency, has put the industry in a rather complicated situation.

The gas up-stream sector is regulated by specific legislation (the "Law on Hydrocarbons"), while transportation, distribution, commercialisation and storage is specifically regulated by the other law (the "Law on Gas") and its specific complementary regulation. The Law on Hydrocarbons contemplates that the Federal or local Governments, where the reservoir is located, may grant concessions for a limited period of time, which can be extended. Such time is 35 years, which can be extended for an additional 10-year period. At Federal level, the Secretary of Energy ("*Secretaría de Energía*") regulates exploration and production. Local administrative authorities have similar capacity with respect to fields transferred to the provinces. Various gas fields originally granted under concession by the Federal Government have been transferred to the provinces where they are located due the enactment of Law 26,197 (known as the "Short Law"), which will be explained below.

Since the privatisation of the gas industry in the early 90s, transportation, distribution and commercialisation are regulated by the Gas Enforcement Authority (the "*ENARGAS*").

Due to a shortage of energy in Argentina during the year 2008, the Federal Government enacted certain incentives to stimulate additional exploration and production of natural gas, to be destined to the local market. Among those incentives is the "Gas Plus" plan outlined in Resolution 24/2008. The gas produced under the "Gas

Plus" plan provides an exemption from the current gas price but gas must be sold on the domestic market.

It is worth mentioning that such incentives have not been sufficient to increase production and add more reserves as much as needed. Pursuant to the applicable laws and regulations, the Federal Government, through its Executive Branch, established the policy on gas matters for both the up-stream and down-stream sectors. Between 2003 and 2007 a carve out to that capacity was made by virtue of certain laws and decrees of the Executive Branch of the Federal Government, allowing the provinces to concede exploration and gas exploitation of fields previously transferred to such provinces (Law 24,145).

Note that Argentina is organised as a Federal country. In this respect, it is worth mentioning that several provincial laws and regulations often overlap with Federal ones.

As a result of the described legal framework there are Federal and provincial Enforcement Authorities (for the up-stream sector), usually belonging to the Executive Branch of the given Government.

The domain and jurisdiction of the oil and gas reservoirs have been transferred by virtue of Law 24,145 - and subsequent Law 26,197 (the "Short Law") - and the licensing capacity of exploration and exploitation of gas reservoirs has also been transferred to the relevant provinces.

Transportation and distribution, including commercialisation and storage of natural gas, are regulated by the Federal Government and have been licensed to private companies. Notwithstanding, the Federal Government is an indirect holder of stake in certain companies. Currently, the Federal Government - for reasons that are not necessarily grounded on commercial grounds - is delaying the appropriate adjustment of tariffs for transportation and distribution of gas. This situation may vary during year 2012.

## 1.2 To what extent are Argentina's energy requirements met using natural gas (including LNG)?

As explained herein above (see answer to question 1.1), the energy matrix of Argentina indicates a high presence of oil and gas. Such percentage could reach far beyond 80% of the total energy sources. In this respect, by 1992 gas reserves were of 541 MM damm<sup>3</sup>. In 2007, reserves declined to 394 MM damm<sup>3</sup>. In 2010, gas reserves were of 350 MM damm<sup>3</sup>. Gas reserves in Argentina continue to decline, thus there are currently less reserves than in 1990.

LNG started to be used in the local market in 2008, in order to avoid the serious consequences derived from a shortage of natural gas production in winter time, when residential consumption increases. That resulted in the lease of a vessel by the private company YPF

(subsidiary of Repsol), which deliquesfies imported LNG.

In Bahía Blanca, Buenos Aires Province, the Bahía Blanca Gas Port regasification plant uses a regasification vessel. The vessel uses an on-board regasification system, which minimises the environmental impact on the surrounding area. The LNG reloading operation is undertaken by a ship-to-ship transfer without leaving the mooring or stopping the gas emission. The facility is connected to the national gas transport network, which enables the output of the regasification vessel to be sent to industries in the region and to the rest of Argentina.

In addition, a project exists for the construction of an LNG plant financed by YPF and the local ENARSA, which includes a port, a pipeline of 35 kilometres in length and a gas dispatch facility. The Escobar terminal, in the North Coast of Buenos Aires Province, is located only 50 kilometres away from Buenos Aires city. Due to its favourable location, Escobar LNG will have a significant impact on the supply to Buenos Aires and the North of Argentina, adding flexibility and fast response to these growing markets. The LNG plant will allow an increase of 14% of the gas volume that the country consumes in winter time.

### 1.3 To what extent are Argentina's natural gas requirements met through domestic natural gas production?

Most of Argentina's local demand is satisfied with local production. However imports, mainly from Bolivia, are needed to secure the gas supply requirements. In 2010, imports from Bolivia of natural gas and LNG - in the aggregate - represented 10% of Argentina's total consumption. During 2010, 22 vessels with LNG entered the country through the Bahía Blanca port. In 2011, with the opening of the Escobar plant, and using of the new gas pipeline "Juana Azurduy", imports of gas and LNG from Bolivia were duplicated.

On June 2011, the Presidents of Argentina and Bolivia assisted the opening ceremony of the integration pipeline "Juana Azurduy". The pipeline has a length of 48 kilometres and it is expected to inject 7.5 million cubic metres of gas per day into our country.

According to information made available by ENARSA's webpage, Argentina entered into an import agreement with Qatar, on January 2011, by which a regasification plant is to be constructed in the San Matías Golf, Río Negro Province, which is intended to add 20 million cubic metres of gas per day with LNG from Qatar.

### 1.4 To what extent is Argentina's natural gas production exported (pipeline or LNG)?

Despite the shortage of production mentioned above, there are export agreements in force pursuant to which natural gas is exported to Chile and Uruguay.

## 2 Development of Natural Gas

### 2.1 Outline broadly the legal/statutory and organisational framework for the exploration and production ("development") of natural gas reserves including: principal legislation; in whom the State's mineral rights to natural gas are vested; Government authority or authorities responsible for the regulation of natural gas development; and current major initiatives or policies of the Government (if any) in relation to natural gas development.

Based on the Argentine Constitution as amended in 1994, and on legislation enacted pursuant to it, property of on-shore gas

reservoirs corresponds to the National State or to the Provincial State where they are located. As a result of that, an important number of fields originally under the jurisdiction of the Federal Authorities have been transferred from the Federal State to provincial ones. It is worth mentioning that off-shore oil and gas reservoirs belong to the National State beyond 12 nautical miles.

### 2.2 How are the State's mineral rights to develop natural gas reserves transferred to investors or companies ("participants") (e.g. licence, concession, service contract, contractual rights under Production Sharing Agreement?) and what is the legal status of those rights or interests under domestic law?

Mineral rights are vested to private companies for a limited period of time by means of exploration permits or exploitation concessions. Exploitation concessions are granted for 35 years, renewable for 10 years pursuant to the Law on Hydrocarbons. Partial relinquishments of the granted areas are contemplated to occur from time to time, mainly based on the fields' conditions - e.g. geological conditions - and real possibilities to conduct exploration and exploitation tasks within the granted areas. Title holders must comply with requirements set forth by law in order to maintain the exploration permits and exploitation concessions.

### 2.3 If different authorisations are issued in respect of different stages of development (e.g., exploration appraisal or production arrangements), please specify those authorisations and briefly summarise the most important (standard) terms (such as term/duration, scope of rights, expenditure obligations).

Exploration is conducted under exploration permits, which grant an exclusive right to explore the relevant area and obtain a concession to exploit the discovered gas fields. The holder of an exploration permit has to pay an area fee or canon and to comply with the committed investments and related obligations.

The exploitation concession entitles the holder of such concession to extract and own the gas. In addition, the concessionaire is entitled to obtain a transportation concession for the extracted gas. Note that the exploitation concession does not grant property over the reservoirs which continue to belong to the relevant States. Thus, the concessionaire pays royalties to the States usually equivalent to 12% of the value of the gas extracted. This percentage could be reduced under certain circumstances. The concessionaire also undertakes an obligation to carry out the investments committed in the bidding conditions.

Exploration and exploitation of hydrocarbons is deemed of a national interest and thus can be conducted even without the consent of the landowner - but certainly with prior awarding of a Court order to enter into the property. However, landowners' right are also protected by the Hydrocarbons Law, which acknowledges compensation rights in favour of landowners for damages generated by the oil & gas companies due to their exploration and exploitation activities within their lands.

Permits for the exploration and concessions for exploitation of areas are usually granted as a result of a bidding process and consequently, terms and conditions may vary from one to another. Notwithstanding, such terms contemplate that concessions are granted by the Executive Branch of the Government with a prior inscription in Registries held by the Secretary of Energy - at Federal level - that are required to participate in those bidding process. Foreign companies are certainly allowed to be registered.

**2.4 To what extent, if any, does the State have an ownership interest, or seek to participate, in the development of natural gas reserves (whether as a matter of law or policy)?**

Despite the privatisation process that took place in the early 90s, in 2004 through Law 25,943, the Federal Government created *ENARSA*. *ENARSA* is a state-owned company that carries out by itself or by third parties, not only the exploration and exploitation of oil and gas, but also its distribution and commercialisation. *ENARSA* is entrusted to promote the development of energy in the country.

Furthermore, it is important to mention that as stated in Section 2 of Law 25,943, since October 2004 *ENARSA* is the “owner” (*sic*) of the exploration permits and exploration concessions of all national maritime areas that were not subject to such permits or concessions at the time of its creation.

**2.5 How does the State derive value from natural gas development (e.g. royalty, share of production, taxes)?**

Provincial States obtain royalties and local taxes from exploitation concessionaries. Royalties are usually a 12% of produced gas and paid on a monthly basis. Under certain circumstances the royalty can be paid in kind. The National State obtains taxes collected at Federal level (mainly Income Tax and Value Added Tax). In addition, taxes on exports are currently in force.

Title holders of exploration permits pay a canon until exploitation begins. The canon is calculated on the basis of the surface of the land covered by each permit and paid annually.

**2.6 Are there any restrictions on the export of production?**

Gas exports require a prior approval of the Federal Government. Pursuant to the Law on Hydrocarbons, such exports can only take place to the extent that the supply of the domestic market is secured. Since 2004 further regulations in this respect have been enacted due to the shortage of energy in the local market. For example, in 2004 a Rationalisation Programme of the Exports of Natural Gas was put in place.

**2.7 Are there any currency exchange restrictions, or restrictions on the transfer of funds derived from production out of the jurisdiction?**

In 1989 and based on the Law on Hydrocarbons, regulations on hydrocarbons were enacted which contemplated that exporters had to transfer back into Argentine market at least 30% of the exports proceeds in foreign currency.

In addition, since 2002, as result of Argentina’s economic and financial crisis, there is a general foreign currency exchange control in force in our country.

On October 2011, according to Executive Order 1722/2011, exporters must transfer and settle in Argentina all foreign currency obtained from their exports. After the foreign currency has been transferred, it must be converted into Argentine Pesos within 120 business days. The Executive Order is regulated by the Argentine Central Bank. At the time this response is provided, it is unclear to what extent said Executive Order affects oil and gas exports.

**2.8 What restrictions (if any) apply to the transfer or disposal of natural gas development rights or interests?**

The assignment of rights to explore and exploit gas fields is subject to the prior approval of the Enforcement Authority. At Federal level such Authority is the Secretary of Energy. As established in the Law on Hydrocarbons, the assignee has to evidence adequate technical and financial capacities to hold such rights.

**2.9 Are participants obliged to provide any security or guarantees in relation to natural gas development?**

No, exploration and exploitation do not require guarantees *per se*. However, as contemplated in the Law on Hydrocarbons, the conferment of guarantees are often required in bidding processes until awarding takes place.

**2.10 Can rights to develop natural gas reserves granted to a participant be pledged for security, or booked for accounting purposes under domestic law?**

Certainly, based on the nature of the rights vested, security interests can be created over rights to explore and exploit gas fields. It is worth mentioning that the Law on Hydrocarbons contains some provisions on this matter, providing certainty to the process of creation and perfection of security interests on these assets. To dispose of the rights, prior authorisation of the Enforcement Authority is needed. In addition, and in accordance with local regulation requirements, the potential assignee of such interests must meet certain technical and financial qualifications.

Local laws contemplate rules for the appropriate accounting of natural gas reserves.

**2.11 In addition to those rights/authorisations required to explore for and produce natural gas, what other principal Government authorisations are required to develop natural gas reserves (e.g. environmental, occupational health and safety) and from whom are these authorisations to be obtained?**

The main governmental authorisations to be mentioned are: (i) approval by the Federal Antitrust Authority - which will depend on the way the rights are acquired (e.g. acquisition of a company) - if applicable; (ii) granting a concession to transport gas from production facilities (e.g. through a gas pipeline), if applicable; (iii) provincial environmental permits, and eventually health and safety certificates; and (iv) Court authorisation to access private lands in case of lack of agreement with landowners (e.g. rights of way and/or easements).

**2.12 Is there any legislation or framework relating to the abandonment or decommissioning of physical structures used in natural gas development? If so, what are the principal features/requirements of the legislation?**

Federal and local regulations contemplate abandonment situations. The more precisely regulated matter is the one related to the abandonment of wells. At Federal level, a series of rules have been issued by the Secretary of Energy, most of which follow international standards.

The Law on Hydrocarbons establishes that regarding premises used for the operation of any given field, upon termination of a concession, the premises shall pass on - free of any lien - to the

State to which the property will revert.

In order to avoid environmental impact, Argentine laws have established proceedings to be carried out by concessionaries for the abandonment of gas wells. Section 69 of the Law on Hydrocarbons deals with well abandonment and indicates that concessionaries must adopt all necessary measures to avoid damages to oil and gas fields. In addition, such Law on Hydrocarbons establishes that concessionaries will be liable for damages caused to the State or to third parties.

Resolution 5/1996 enacted by the Secretary of Energy states that inactive or “to be abandoned” wells must be categorised by concessionaries according to their location, status (i.e. active or inactive), and priority (i.e. importance of situations that may be generated as a result of the conditions of the well). Such categorisation will be considered to determine the term for the abandonment established by the above Resolution.

The mentioned Resolution makes a distinction between the two kinds of gas well abandonments, temporary and definitive abandonment, which shall be determined by the concessionaire of the corresponding area where the well is located. Such determination will be made according to technical, commercial or operative reasons. Abandonment could be temporary in cases where the well may be reused.

Regarding techniques to abandon gas wells, the Authority recommends concessionaires to adopt certain techniques detailed in Resolution 5/1996 for temporary or definitive abandonment. For instance, in the event that the abandonment is definitive, the well must be isolated with cement to prevent further damages to the well area. If the abandonment is temporary, concessionaries may also adopt other measures that may be more adequate - technically and economically - with respect to each well or area provided that they comply with the requirements regarding environmental security and protection and as long as the Enforcement Authority does not object to them.

Concessionaries must provide the Enforcement Authority with certain information concerning the abandonment of a gas well within 45 days from the date in which such abandonment took place.

Furthermore, the Secretary of Energy - at a Federal level - enacted certain rules stating that concessionaries must annually file with the Secretary of Energy a report detailing the activities performed within each field under concession, including those related to the abandonment of wells. All the activities connected with well abandonment must be supervised by a qualified inspector of the operating company.

### 2.13 Is there any legislation or framework relating to gas storage? If so, what are the principle features/requirements of the legislation?

Any person involved in the gas storage business must generally comply with the relevant regulations contemplated in the Law on Gas. Their installations and equipment should not constitute a danger to public safety and should be maintained under very strict measures enacted by ENARGAS. In this respect, the ENARGAS has enacted the Argentine gas rules (*Normas Argentinas de Gas NAG-443-NAG-444*), establishing the legal framework that governs the storage of gas. To mention a few, gas establishments should be located in industrial areas of low building density and be situated at a distance of at least 100 metres of public buildings or places of concentration of more than 150 people, such as hospitals and schools, among others. Additionally, they must have a land use permit which is granted by the local town authority. As far as storing containers of compressed gas are concerned, they have to be revised periodically by the personnel of the ENARGAS.

## 3 Import / Export of Natural Gas (including LNG)

### 3.1 Outline any regulatory requirements, or specific terms, limitations or rules applying in respect of cross-border sales or deliveries of natural gas (including LNG).

As indicated before (see response to question posed in section 2 above), export of natural gas requires the prior approval of the Secretary of Energy. Resolution 299/98 regulates natural gas exports, defining its limitations and the necessary requirements needed to obtain the Secretary’s approval to export natural gas.

During the last years, Argentina’s Government followed a strong policy of intervention in the local gas market. Furthermore, the Law on Hydrocarbons and the Law on Gas highlight that natural gas authorisation for exportation will be granted to the extent that they do not affect Argentina’s domestic supply.

As the Law on Gas states in section 3, as far as natural gas imports are concerned, they do not require any kind of authorisation. Copies of the import and export agreements are to be filed before the Gas Enforcement Authority.

## 4 Transportation

### 4.1 Outline broadly the ownership, organisational and regulatory framework in relation to transportation pipelines and associated infrastructure (such as natural gas processing and storage facilities).

Natural gas transportation is contemplated in the Law on Gas, and subsequent regulations, establishing that gas transportation shall be carried out under authorisation - by means of a concession, licence, or permit - granted by the Executive Branch of the Federal Government.

The laws currently in force contemplate that this activity is to be performed by private companies, and that the State can also participate in case of absence of interest from private parties.

### 4.2 What Governmental authorisations (including any applicable environmental authorisations) are required to construct and operate natural gas transportation pipelines and associated infrastructure?

As indicated above, the transportation of natural gas requires an authorisation - by means of a concession - to be granted pursuant to the Law on Gas and usually for a term of 35 years, which can be extended for 10 more years.

The Federal Authority grants the required authorisation in order to construct and operate natural gas pipelines when they cross the territory of more than one province.

A concession title in order to construct and operate a natural gas pipeline is required. Such concession title is mandatory and is granted by the National Authorities.

### 4.3 In general, how does an entity obtain the necessary land (or other) rights to construct natural gas transportation pipelines or associated infrastructure? Do Government authorities have any powers of compulsory acquisition to facilitate land access?

In order to construct new gas pipelines or even to expand existing ones, transporters and distributors must be granted authorisations issued by the ENARGAS.

In the case that gas carriers cannot reach an agreement with landowners, gas carriers are entitled to obtain easements on the surface land. Easements can be obtained from the *ENARGAS*.

#### 4.4 How is access to natural gas transportation pipelines and associated infrastructure organised?

The principle that rules the activity is that of open access, without discrimination. Preferences among different parties shall be based on objective reasons and decided by the *ENARGAS*. Carriers have to offer third parties the excess capacity of their systems through bidding processes. Conflicts among parties are resolved by the *ENARGAS*.

#### 4.5 To what degree are natural gas transportation pipelines integrated or interconnected, and how is co-operation between different transportation systems established and regulated?

As a result of the Privatisation of “*Gas del Estado*”, in 1992 the owners of the main gas pipe transportation system are: *Transportadora de Gas del Norte S.A.*; and *Transportadora de Gas del Sur S.A.* The interaction and cooperation for a more efficient nationwide transportation system is a requirement, as contemplated in the Law on Gas.

#### 4.6 Outline any third-party access regime/rights in respect of natural gas transportation and associated infrastructure. For example, can the regulator or a new customer wishing to transport natural gas compel or require the operator/owner of a natural gas transportation pipeline or associated infrastructure to grant capacity or expand its facilities in order to accommodate the new customer? If so, how are the costs (including costs of interconnection, capacity reservation or facility expansions) allocated?

As indicated above, the rule is open access to the transportation system, with respect to the capacity that has not been already acquired by other parties. Carriers however, could be obliged - pursuant to the terms of the authorisation granted - to expand their gas transportation systems to the extent that: (i) such extension is convenient for the needs of public transport service; and (ii) applicable tariffs may allow to recover the investment and maintain an adequate profitable business, as contemplated in the Law on Gas.

#### 4.7 Are parties free to agree the terms upon which natural gas is to be transported or are the terms (including costs/tariffs which may be charged) regulated?

Currently, tariffs are regulated, as well as most of the terms and conditions to render the transportation service.

Pursuant to the Law on Gas, every distributor must apply the same gas tariffs to the same service, to all consumers. Tariffs originally established, in the terms and conditions of the authorisation granted, may vary among different clients when the characteristics of the service rendered changes. In order to modify tariffs, prior approval of the *ENARGAS* is required.

As already mentioned, applicable tariffs and their adjustment terms were settled at the time the privatisation took place. However, after Argentina’s economic and financial crisis of 2002, the revision of the agreed tariffs has been delayed, jeopardising the gas transportation business.

## 5 Transmission / Distribution

### 5.1 Outline broadly the ownership, organisational and regulatory framework in relation to the natural gas transmission/distribution network.

The gas industry in Argentina is organised in three sectors: (i) production; (ii) transportation; and (iii) distribution.

Distribution through pipelines is considered a public service. Distribution is to be rendered pursuant to an authorisation (concession, licence, or permit), to be granted by the Secretary of Energy, as contemplated in the Law on Gas. The *ENARGAS* is the same Gas Authority that regulates transportation of natural gas. Applicable law establishes that the distribution service is to be rendered by private companies.

In Argentina there are 9 gas distribution companies. Said gas distribution private companies are: *Gasnor S.A.*, *Gasnea S.A.*, *Distribuidora de Gas del Centro S.A.*, *Litoral Gas S.A.*, *Distribuidora de Gas Cuyana S.A.*, *Gas Natural Ban S.A.*, *Metrogas S.A.*, *Camuzzi Gas Pampeana S.A.*; and *Camuzzi Gas del Sur S.A.*

In 2004, through Decree 180/04 and Resolution 185/04, the Federal Government created a fund to be used to expand energy facilities, including a trust fund to be used as vehicle to finance the expansion of the transport and distribution services of natural gas.

### 5.2 What Governmental authorisations (including any applicable environmental authorisations) are required to operate a distribution network?

The Law on Gas requires that all private companies rendering gas distribution services must, in advance, obtain an authorisation issued by the Executive Branch and the applicable provincial authorisations dealing with construction and maintenance of pipelines. The Executive Branch authorisations are granted for a 35-year term and can be extended for 10 more years.

According to Section 16 of the Law on Gas, all gas distribution companies need prior authorisation of the *ENARGAS* in order to begin the construction of any facility.

### 5.3 How is access to the natural gas distribution network organised?

Pursuant to the Law on Gas, distribution is a public service organised on the open access basis with respect to the excess capacity of the given system. Conflicts with distributors will be decided by the *ENARGAS*.

All natural gas distributors must respond to every gas consumer’s demand in 30 days.

### 5.4 Can the regulator require a distributor to grant capacity or expand its system in order to accommodate new customers?

Section 32 of the Law on Gas indicates that distributors may be required to expand their facilities, to the extent that such expansion is deemed convenient to satisfy the needs of the distribution service. In addition, the Law on Gas regulates that tariffs must allow recovery of the distributors’ investments.

### 5.5 What fees are charged for accessing the distribution network, and are these fees regulated?

The Law on Gas dedicates its Chapter IX to tariffs. Tariffs are established in the bidding conditions and are expected to compensate distributors for their operating costs, taxes, amortisation, and the need of maintaining a reasonable profitable business.

Different tariffs may apply to the extent that they are economically based on differences in the service rendered and approved by the Gas Enforcement Authority.

### 5.6 Are there any restrictions or limitations in relation to acquiring an interest in a gas utility, or the transfer of assets forming part of the distribution network (whether directly or indirectly)?

Effectively, there are restrictions. None of the following gas market players can have control over gas distribution companies: (i) gas carriers and their controlling entities; (ii) consumers that acquired natural gas from producers; and (iii) operators of storage facilities. Since distribution of gas is considered a public service, it is a strongly regulated industry in which distributors cannot freely dispose of their assets and networks. As a consequence, distributors cannot lease, sublease or assign their assets and networks to other purpose not related with the distribution of gas.

## 6 Natural Gas Trading

### 6.1 Outline broadly the ownership, organisational and regulatory framework in relation to natural gas trading. Please include details of current major initiatives or policies of the Government or regulator (if any) relating to natural gas trading.

The legal framework for gas trading is regulated by the Law on Gas and subsequent regulations pursuant to it. Decree 180/2004 updated the regulation of the electronic wholesale market for natural gas (MEG). Players on the market are not only traders but also gas producers. This “entity” creates an Authority in charge of the coordination of the trading. In this respect, traders must be registered with the Secretary of Energy.

### 6.2 What range of natural gas commodities can be traded? For example, can only “bundled” products (i.e., the natural gas commodity and the distribution thereof) be traded?

In 2004, the Executive Branch of the Federal Government introduced certain modifications to Argentina’s gas market regulation (different from a pure bundling structure), and created a fund for investments in transportation and distribution in the gas sector, and classified consumers into different categories, depending on gas expenditures.

## 7 Liquefied Natural Gas

### 7.1 Outline broadly the ownership, organisational and regulatory framework in relation to LNG facilities.

There is no regulation related to Liquefaction facilities. On August 2011, Argentina and Uruguay entered into an agreement for the development of an LNG regasification plant, aimed at providing natural gas to both countries during a term of 15 years as of 2013.

### 7.2 What Governmental authorisations are required to construct and operate LNG facilities?

There is no regulation in this area.

### 7.3 Is there any regulation of the price or terms of service in the LNG sector?

There is no regulation in this area.

### 7.4 Outline any third-party access regime/rights in respect of LNG Facilities.

There is no regulation in this area.

## 8 Competition

### 8.1 Which Governmental authority or authorities are responsible for the regulation of competition aspects, or anti-competitive practices, in the natural gas sector?

Regulation is enacted by Congress. Competition aspects are regulated by Antitrust Law N° 25,156 (the “Antitrust Law”) and other subordinated regulations.

Although Section 17 of the Antitrust Law establishes an obligation for the Argentine State to create an independent “Competition Court” that would be in charge of analysing infringements, such a court has never been created. Enforcement is therefore the responsibility of the “*Comisión Nacional de Defensa de la Competencia*”, an administrative agency that depends on the Secretary of Commerce (and, indirectly, on the Executive Branch).

The gas market has a double regulatory check with respect to eventual antitrust practices. The *ENARGAS* also has the capacity to approve or reject concentration of players in the gas market.

### 8.2 To what criteria does the regulator have regard in determining whether conduct is anti-competitive?

The criteria is based on any conduct that lessens competition illegal insofar as the “general economic interest is affected”, no matter whether unilateral or bilateral, exclusive or predatory. This includes the abuse of dominance.

### 8.3 What power or authority does the regulator have to preclude or take action in relation to anti-competitive practices?

It has full power to establish fines and issue orders to stop illegal conducts. Its powers to issue injunctions are disputed, and case law is not uniform. Fines and orders are subject to judicial review.

### 8.4 Does the regulator (or any other Government authority) have the power to approve/disapprove mergers or other changes in control over businesses in the natural gas sector, or proposed acquisitions of development assets, transportation or associated infrastructure or distribution assets? If so, what criteria and procedures are applied? How long does it typically take to obtain a decision approving or disapproving the transaction?

Mergers that involve the control of a company or part of a company and reach certain thresholds are subject to merger control and



approval by the *Comisión Nacional de Defensa de la Competencia*. Under Section 17 of the Antitrust Law, before issuing a final opinion the *Comisión Nacional de Defensa de la Competencia* needs to give notice to / request an opinion from the Gas Regulatory Agency.

## 9 Foreign Investment and International Obligations

### 9.1 Are there any special requirements or limitations on acquisitions of interests in the natural gas sector (whether development, transportation or associated infrastructure, distribution or other) by foreign companies?

No special requirements or limitations on acquisitions of interest in the natural gas sector exist in the Argentine applicable laws. In other words, local laws regulate that foreign investors are to be treated as national ones.

### 9.2 To what extent is regulatory policy in respect of the natural gas sector influenced or affected by international treaties or other multinational arrangements?

Pursuant to the Argentine Constitution, local laws have to conform to international treaties.

Argentina is a party to numerous international treaties for the promotion and protection of foreign investments, e.g., with France (Law 24,100), Spain (Law 24,118), Italy (Law 24,122), United States (Law 24,124), Canada (Law 24,125), Switzerland (Law 24,099) and Chile (Law 24,342).

In connection with gas commerce, Bolivia and Argentina have signed several agreements. Bolivia is Argentina's largest gas supplier. Gas commercialisation between them must respect the terms and conditions set in the treaties agreed by them.

Argentina and Chile have agreed to encourage free importation and exportation of natural gas. A few years ago, the energy shortage situation in Argentina derived in the interruption of gas supply to Chile.

## 10 Dispute Resolution

### 10.1 Provide a brief overview of compulsory dispute resolution procedures (statutory or otherwise) applying to the natural gas sector (if any), including procedures applying in the context of disputes between the applicable Government authority/regulator and: participants in relation to natural gas development; transportation pipeline and associated infrastructure owners or users in relation to the transportation, processing or storage of natural gas; and distribution network owners or users in relation to the distribution/transmission of natural gas.

Disputes in the gas market related to the rendering of gas transportation and distribution must be submitted to the *ENARGAS*. The *ENARGAS*'s decisions can be challenged following the administrative proceeding contemplated in Federal laws or directly appealed before the National Court of Appeals, with jurisdiction on administrative federal matters. The term to appeal is 15 days, counted as from the service of process of the decision.

Penalties imposed by the *ENARGAS* can be directly appealed before the National Court of Appeals with jurisdiction on administrative federal matters, within 30 days from when the penalty is notified.

### 10.2 Is Argentina a signatory to, and has it duly ratified into domestic legislation: the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and/or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID")?

Argentina has signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID"). The former one has been ratified by Law 23,619 and the latter one by Law 24,353.

### 10.3 Is there any special difficulty (whether as a matter of law or practice) in litigating, or seeking to enforce judgments or awards, against Government authorities or State organs (including any immunity)?

Payments have not been made yet in connection with awards favourable to plaintiffs, nor local courts have revised those awards. It is worth mentioning that during the past years, some plaintiffs agreed to waive certain claims before ICSID arbitral tribunals.

### 10.4 Have there been instances in the natural gas sector when foreign corporations have successfully obtained judgments or awards against Government authorities or State organs pursuant to litigation before domestic courts?

In several cases foreign competitors have been able to invoke bilateral investments treaties and conventions. This resulted in several arbitration claims. Some gas industry plaintiffs obtained favourable awards issued by ICSID arbitration panels. Notwithstanding, we are not aware of payments made under such awards yet.

## 11 Updates

### 11.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Gas Regulation Law in Argentina.

Since October 2011, and according to Executive Order 1722/2011, exporters must transfer and settle in Argentina all foreign currency obtained from their exports. After the foreign currency has been transferred, it must be converted into Argentine Pesos within 120 business days. The Executive Order is regulated by the Argentine Central Bank. It is not certain yet, to what extent this Executive Order 1722/2011 may affect oil and gas exporting companies.

**Roberto A. Fortunati**

Estudio Beccar Varela  
Tucuman 1, 3rd Floor  
Buenos Aires, C1049AAA  
Argentina

Tel: +5411 4379 6813  
Fax: +5411 4379 6860  
Email: [rfortunati@ebv.com.ar](mailto:rfortunati@ebv.com.ar)  
URL: [www.ebv.com.ar](http://www.ebv.com.ar)

ROBERTO A. FORTUNATI is a Partner at Estudio Beccar Varela and a member of its Managing Committee. His professional activity is mainly concentrated in banking, and corporate finance focused in the oil and gas and mining sectors. He has also been acting as consultant to The World Bank in insolvency matters. Mr. Fortunati acted as leading local counsel for several major project financings, mainly related to mining (including the one related to Veladero Gold Project in 2004), oil and gas, and utilities. He has led the market in the area of out-of-court debt restructurings (work-outs), and largely participated in the privatisation of state-owned companies, M&A and in the start-up of venture capital investments. He is a member of the board of directors of several corporations, including acting as an independent director and member of auditing committees, and arbitrator of the MAE (the local OTC electronic market). Mr. Fortunati is a member of the Buenos Aires Bar Association and of the AIPN (Association of International Petroleum Negotiators). In academic grounds, he is a member of the Advisory Board of the School of Law of Torcuato Di Tella University, Buenos Aires and teaches project financing in a postgraduate course on Oil and Gas Law, at the School of Law of the University of Buenos Aires. Mr. Fortunati is a frequent lecturer on oil and gas, debt restructuring, project financing, and other financial matters. Mr. Fortunati acted as General Counsel of Citibank Argentina. He started his professional career as in-house counsel of Amoco Argentina Oil Company. He graduated from the Law School of the University of Buenos Aires in 1979.

**Isabel Amadeo**

Estudio Beccar Varela  
Tucuman 1, 3rd Floor  
Buenos Aires, C1049AAA  
Argentina

Tel: +5411 4379 4797  
Fax: +5411 4379 6860  
Email: [iamadeo@ebv.com.ar](mailto:iamadeo@ebv.com.ar)  
URL: [www.ebv.com.ar](http://www.ebv.com.ar)

ISABEL AMADEO is a Senior Associate at Estudio Beccar Varela. Ms. Amadeo graduated in 1998 as attorney at law from Universidad Católica Argentina, in Buenos Aires, Argentina. In 2000 she received her LL.M. degree from Columbia University, School of Law, New York, USA. Before joining Estudio Beccar Varela in May 2011, she worked - first as an associate (2002 - 2004) and then as of counsel (2004 - 2011) - at Thompson & Knight LLP, in Dallas, Texas. Ms. Amadeo is a member of the Buenos Aires Bar Association and of the AIPN (Association of International Petroleum Negotiators).

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