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**ARGENTINA YPF EXPROPIATION  
AN AGGRESSIVE MOVE**

**AMERICAN FOREIGN LAW ASSOCIATION  
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# NATIONALIZING YPF BY EXPROPRIATING THE SHARES OF REPSOL

AN EXPROPRIATION IS LEGAL IF:

- A) THERE IS A PUBLIC INTEREST INVOLVED AND
- B) A COMPENSATION IS PAID

# PURPOSE, RATIONALE AND JUSTIFICATION OF THE GOVERNMENT DECISION



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- **Purpose:** Maximizing the exploration, exploitation, industrialization, transportation and commercialization of hydrocarbons with the purpose to achieve a self-sufficient status.
- **Rationale and Justification:** YPF maintained a short term strategy featured by the progressive emptying of the company, the decrease of investments, the decrease of production and the reduction of reserves. Hydrocarbons constitute a strategic supply that has an impact on all areas of the economy. Thus, a company with a 40% market share cannot be allowed to create adverse conditions for the Argentine economic environment.

- The combination of the following factors was crucial to the timing:
  - the convenience to act in advance to the shareholders meeting scheduled for April 25, 2012;
  - the need to maximize the development of “Vaca Muerta” (shale gas);
  - the need to put an end in the exploration and production deficit.
  - YPF’s policy of not reinvesting profits; and
  - the convenience to act before the rumored sale of Repsol’s controlling stake of YPF materializes into an actual sale.

# THE OIL AND GAS INDUSTRY

## EVOLUTION OF PRODUCTION AND RESERVES



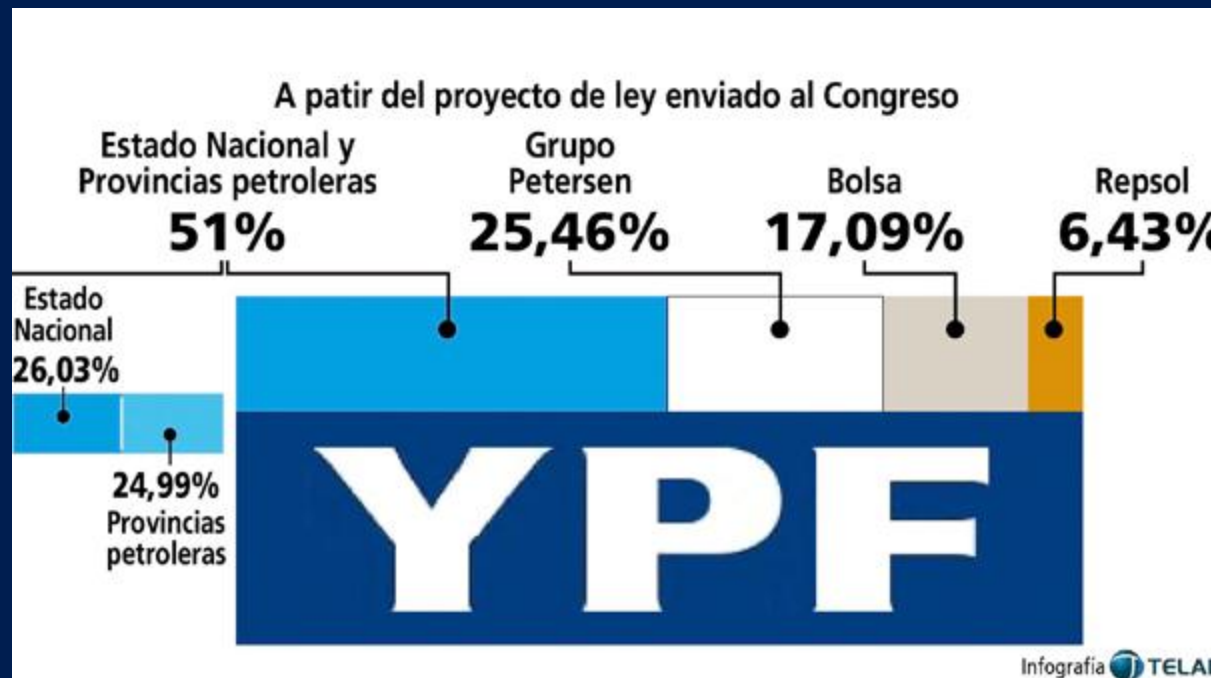
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- a) In 1997 YPF accounted for 42% of all oil production and to 35% of gas production.
- b) By the 2011, YPF's market share went down to 34% in oil production, and 23% in gas production.
- c) From 1999 to date, oil reserves were reduced by 40%, while gas reserves were reduced by 50%.
- d) From 2004 to 2011 gas production diminished 38%.
- e) Estimated horizon of gas reserves in 1997 was of 17 years. In 2012 it amounts to about 7 years.
- f) YPF accounted to 54% of the reduction in oil production and to 97% reduction in gas production between 1998 and 2011.

# NEW SHAREHOLDERS DISTRIBUTION



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# THE ENERGY POLICY

## EVOLUTION OF LEGAL FRAMEWORK



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- **Federal jurisdiction and YPF monopoly role (with third-party contractors).**
- **Oil and Gas Policy and YPF role as from mid 80's.**
- **1989 Oil Deregulation Decrees -- YPF going public in early nineties.**
- **1994 Constitutional reform: Federal vs Provincial jurisdiction. The Federal Government loses its overseeing role but keeps YPF control.**
- **Sale of YPF to Repsol. No control of policy decisions.**
- **Enactment of 2006 so called Short Law (Provincialization of Hydrocarbons in line with 1994 National Constitution).**
- **Secretariats of Energy: lack of personnel to supervise permits and concessions.**

**Private interest vs. Public interest dilemma. Companies' goals are to maximize profits for sheer creation of shareholders' value. But all countries in the world consider energy and natural resources a high-priority security issue (geopolitical strategy).**

# LEGAL FRAMEWORK FOR PROTECTION OF PRIVATE PROPERTY



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The governing principles in any expropriation or substantial restriction of private property rights are: *public interest* and *adequate compensation*.

a) **National Constitution**: Article 17.- Expropriation shall require prior (a) enactment of a law establishing the public interest, and (b) compensation.

b) **Bilateral Investment Treaty between Argentina and Spain** (*approved by Law 24,118, of September 3, 1992*): Public interest should be the cause of any nationalization or expropriation. Non-discrimination. Adequate indemnification should be paid promptly in convertible currency.

c) **Law 21,499 of 1977 – Due-procedure for expropriation**: Public interest qualification must be specifically held as ground for the expropriation. Indemnification shall be determined by the *Tribunal de Tasaciones* (Valuations Tribunal) in case of real estate, or by ad-hoc appointed technical agencies in case of other assets. Valuation must comprise objective value plus direct damages, interest and currency depreciation. Future profits shall be excluded from valuation. Indemnification must be paid in cash except as otherwise agreed with the indemnitee. Right to discuss the values in Court.



- **Necessity and Urgency Decree (DNU). Subsequent Law No. 26,741.**
- **Declaration of Public Interest and Public Policy Objectives in the oil sector.**
- **Creation of the Federal Council of Hydrocarbons to coordinate the policies between the Federal Government and the Provinces.**
- **Expropriation of an amount of Repsol shares in YPF representing a 51% stock stake of YPF.**
- **Intervention. Removal of officers and management to protect business and assets. The Argentine Securities and Exchange Commission (CNV) has convened a shareholders' meeting for next June 14 to appoint new members of the Board of Directors and new members of the Supervisory Committee**

## **GOVERNMENT MEASURES -- (II)**

- **YPF shall continue operating as a private corporation.**
- **Administrative or any other regulatory powers of overseeing, controlling or managing the operations proper of a State entity shall not apply.**
- **Shareholders rights of the federal and provincial governments will be exercised in accordance to the public policies established in Law No. 26,741.**
- **Management will be consistent with industry practices, preserving the interest of shareholders and generating value for them.**
- **YPF can obtain local and foreign financing, establish strategic alliances, joint ventures, transitory associations, and any other kind of corporate collaboration agreements with private or public companies, either domestic or foreign.**

- **YPF ended 2011 with U\$D3 billion of debt in the aggregate.**
- **Short term debt of U\$D1,9 billions**
- **Debt comprised mostly by trade finance and working capital with banks**
- **Creditors refusal to grant rollovers may force YPF to repay its debt with its operating cash flow**
- **EBIDTA for 2011 was of U\$D3,5 billion**

- **Spain first announcements**
- **Spain change of approach**
- **Argentina' reaction or lack of it**
- **Congressional approval (Law No. 26,741)**
- **Public opinion/ media coverage**
- **International pressure**

- DISCUSS THE VALUATION (a must in order to preserve its rights in any court or tribunal)
- File all possible procedural motions and objections challenging the validity of the measures:
  - \_ procedural mistakes
  - \_ substantial issues
  - \_ violation of treaties
  - \_ harassment of management
- ICSID

**AEMEC: *Asociación Española de Accionistas Minoritarios de Empresas Cotizadas.***

- **Protects minority shareholders of Repsol, who bought its shares considering the performance of YPF as an asset of Repsol:**
- **Actions under analysis:**
  - a) **motion to stay (amparo) in Argentina**
  - b) **arbitration**
  - c) **tort action in the US**
- **Comments: ICSID has already admitted claims from shareholders (*Abaclat y otros c. Argentina, Caso CIADI n° ARB/07/5; Giovanni Alemanni y otros, Caso CIADI n° ARB/07/6; y Giordano Alpi y otros, Caso CIADI n° ARB/08/9*).**

# REPSOL'S STOCK COMPOSITION



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- CAIXA BANK 12.97%
- SACYR 10.01%
- PEMEX 9.49%
- BBVA 3.32%
- BLACKROCK 3.07%
- OTHERS 27.22%

# LEGAL OPTIONS FOR LENDERS AND BONDHOLDERS



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- There is a change of control provision
- This provision allows lenders and bondholders the chance to ask the trustee (bank of new york for 2028 bonds) or holders representing 25% of principal to ask for repayment at par by notice in writing – The 2028 bond prospectus holds nationalization as a default event.
- The amount in question is of only US\$230 millions for both Peso and Dollar bonds.
- YPF may pay out from its own cash balances.



- If Petersen Group is unable to repay its loans its creditors may become shareholders of YPF
- In 2008 Petersen bought initially a 14.9% stake of YPF. By 2011 its stake was of 25.46%. Aggregate purchase price of US\$ 3.34 billion.
- Debt was financed through senior and subordinated loans with various banks.
- There is also a “change of control provision”.
- There is still US\$ 2.8 billion in outstanding principal debt.

# PETERSEN ENERGIA

## INITIAL INVESTMENT AND DEBT



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- Petersen Energía is an Australian company of the Eskenazi family
- In 2008 this Company received a loan of US\$ 1,018 millions from a pool of banks: Crédit Suisse, Goldman Sachs, BNP Paribas and Banco Itaú Europa, and another one from Repsol for US\$ 1,015 millions.
- In 2011, Grupo Petersen acquired another 10% stake of YPF under a similar financial structure: US\$ 670 millions from a pool of banks (Banco Itaú, Standard Bank, Crédit Suisse and Citi), and another one of approximately US\$ 670 millions from Repsol.
- If Petersen is unable to meet its debt obligations the banks may foreclose the pro rata amount of shares currently held as debt collateral.

# THE FUTURE AFTER REPSOL AND FOREIGN INVESTMENTS



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## Reality check:

- A 40% of the market was reserved for only one company: Repsol-YPF.
- Shale gas. A US\$ 250 billion business to be developed (*Vaca Muerta*).
- The new YPF role calls for joint ventures and strategic alliances
- Currently the following companies are operating in Argentina:
  - Pan American Energy (British Petroleum –BP- 60%) and Bidas (40%) of the Bulgheroni family and CNOOC. Second largest oil producer with 20%. Third producer of gas (15%). Bidas bought Exxon's refining business in Argentina. PAE holds until 2043 the largest oil concession (Cerro Dragon in the province of Chubut).
  - Total Austral (French), which is the second producer of gas.
  - Petrobras, 7% of oil production. Fourth producer of gas with a 9% market share.
  - Sinopec (a Chinese SOE).
  - Chevron Texaco.
  - Pluspetrol (Argentine capital).
  - Tecpetrol (controlled by Techint group).
  - There are 30 other companies: Enap Sipetrol (Chile), Apache (USA), and Argentine owned companies such as, among others, Medanito, Oil M&S and Epsur

- The expropriation of YPF is consistent with a recent geopolitical trend, featured by several countries intent to secure substantial ownership and leadership in their domestic hydrocarbons industries.
- A new era has started for the Argentine oil & gas industry.
- Despite any discussions on the grounds for YPF expropriation and Repsol's indemnification rights, a wide array of new opportunities for doing business in the Argentine oil & gas industry has been created.
- Foreign and domestic corporations are already holding negotiations with the Argentine government. Changes in the regulatory framework are already under discussion.
- Chevron Texaco, Exxon, Total, Sinopec and PAE (BP - Bulgheroni - CNOOC) are leading the way.



This document should not be construed as legal advice. Therefore, in case any issue relating to YPF or the Argentine oil & gas market arises during the course of business, you should seek legal advice.

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