

THE ANTI-BRIBERY AND
ANTI-CORRUPTION
REVIEW

TENTH EDITION

Editor
Mark F Mendelsohn

THE LAWREVIEWS

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PREFACE

The covid-19 pandemic has had a monumental and disruptive effect on practically all aspects of business, politics, law and daily life in nearly every corner of the globe. For companies conducting cross-border business, and legal practitioners who advise them, corruption remains a substantial risk area. And with national governments engaging in large-scale economic stimulus programmes and contracting on an emergency basis with a wide range of suppliers of critical goods and services, the opportunities for fraud, corruption and abuse are replete. The current global health crisis unfolded onto a world stage that is dynamic and roiling with anti-corruption activity and developments. This tenth edition of *The Anti-Bribery and Anti-Corruption Review* presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning the globe, including a new chapter covering Portugal. The comprehensive scope of this edition of the Review mirrors that dynamism.

Over the past two years, countries across the globe have continued to investigate and prosecute a range of corruption cases – many involving heads of state and senior officials – strengthen their domestic anti-bribery and anti-corruption laws, and adopt important new law enforcement policies and guidance documents, though tumultuous international relations, rising economic competition and the effects of the pandemic are combining to threaten international cooperation and the progress of cross-border investigations more generally.

2020 saw French-headquartered Airbus SE reach a US\$3.9 billion coordinated corporate bribery and export controls resolution with authorities in France, the United Kingdom and the United States. The wide-ranging allegations involved alleged bribery of government officials in more than a dozen countries, as well as US export controls-related offences, and now other jurisdictions from Ghana to Malaysia are pressing forward with their own investigations. At the same time, the 1MDB scandal continued to play out, with still further US asset forfeiture actions, criminal charges against a major US Republican fundraiser for allegedly acting as an unregistered foreign agent in an attempt to illegally lobby the Trump administration to drop its probe into the 1MDB corruption scandal and an appeal by former Malaysian prime minister Najib Razak against his convictions on bribery and money-laundering charges and the resulting 12-year prison term. And in Brazil, which has for many years been a hotbed of anti-corruption investigations, President Jair Bolsonaro took the controversial step of ending his country's long-running Car Wash probe, following the resignation of his justice minister who, as judge, had previously presided over the probe.

Given the political turmoil and the global health crisis still confronting us in the remainder of 2021 and into 2022, this book and the wealth of country-specific learning that it contains will help guide practitioners and their clients when navigating the perils of

corruption in foreign and transnational business, and in related internal and government investigations. I am grateful to all of the contributors for their support in producing this highly informative volume.

Mark F Mendelsohn

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Washington, DC

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ARGENTINA

Vanina Caniza, Fernando Goldaracena, Francisco Fernández Rostello and Nicolás Servente¹

I INTRODUCTION

In Argentina, anti-bribery and anti-corruption regulations are included in the Argentine Criminal Code (ACC) under Titles VI (property crimes), XI (public administration crimes) and XII (books and records crimes).

Until 2 March 2018, when Corporate Criminal Liability Law No. 27,401 (Law No. 27,401) came into force, there was no corporate criminal liability for acts of corruption.

Before Law No. 27,401, companies could, however, be held criminally liable and were prosecuted for associated offences such as money laundering and terrorism financing, tax evasion, manipulation of financial markets and misleading offers, insider trading and antitrust offences, which are often related to acts of corruption.

Argentina is a member of several conventions and international treaties aimed at fighting corruption, foreign bribery and associated offences. There have been sustained recent efforts by the Argentine government to update and enforce anti-corruption.

This chapter is intended as a guide to Argentinian regulations on domestic and foreign corruption. In addition, we address the legal framework of associated offences such as financial record-keeping and money laundering, legislative developments and recent cases and investigations. Finally, we have included a summary of the current trends in local anti-corruption matters and our conclusions.

II DOMESTIC BRIBERY: LEGAL FRAMEWORK

The ACC sanctions any public officer or individual who engages in corrupt practices with public officers. Law No. 27,401 sets forth penalties applicable to legal entities involved in acts of corruption. Until Law No. 27,401 was enacted, only individuals involved in corruption offences could be held criminally liable.

According to Law No. 27,401, legal entities will be held criminally liable for corruption offences, if such offences were committed with their intervention, or in their name, interest or benefit.

¹ Vanina Caniza, Fernando Goldaracena and Francisco Fernández Rostello are partners and Nicolás Servente is an associate at Baker McKenzie.

The ACC broadly defines ‘public officer’ as any individual who is temporarily or permanently involved in public functions.²

The ACC prohibits public officers from receiving or accepting money or other benefits or gifts, in exchange for doing or refraining from doing something related to their duties (i.e., passive bribery); and from giving or offering, directly or indirectly through an intermediary, any payments or gifts to a public officer (i.e., active bribery). Under the ACC, the mere giving or acceptance of money, gifts or any kind of benefits to obtain any illicit benefit from the public officer would constitute a corruption offence, regardless of whether the behaviour of the public officer was influenced or affected.

Penalties range from between one and six years of imprisonment, and special disqualification for life from exercising public duties in the case of passive bribery.

The ACC describes influence peddling as any request or acceptance of money or any gift, or acceptance of any promise, such as money or gifts, to unlawfully influence a public officer. Influence peddling is punished with imprisonment from one to six years and disqualification for life from exercising public duties.

Both bribery and improper lobbying offences involving members of the judiciary constitute aggravated specific offences, in which case penalties go up to 12 years’ imprisonment.

Gifts or other benefits to public officers are not permitted even if nothing specific is requested in exchange from a public officer. This crime requires the giving of a gift to a public officer (or the acceptance of a gift by a public officer) but does not require a direct connection to an action or omission of the public officer. This offence punishes the mere giving of a gift or benefit to a public officer due to his or her capacity as a public officer. Sanctions range from between a maximum of one year of imprisonment for private citizens and a maximum of two years of imprisonment for a public officer.

In addition to the above, under Law No. 27,401, individuals convicted for corruption offences would also be exposed to fines from two to five times the improper benefit obtained from the crime.

Decree No. 1179/2016 (18 November 2016), in turn, provides general guidelines on gifts to public officers. Judges are likely to take these guidelines into consideration when interpreting anti-corruption violations.

An exception is made for courtesy gifts or diplomatic traditions. Under Decree No. 1179/2016, public officers may accept gifts when their market value does not exceed 6,400 Argentine pesos. If the gift’s value exceeds 6,400 Argentine pesos, prior authorisation should be required and the gift must be registered as an asset of the federal government. Meals for public officers are allowed only if they are ‘modest’ and occasional.

There is no safe harbour for facilitation payments under Argentine law.

Private corruption is not expressly included in the ACC, as it is, for instance, in the UK Bribery Act.³ However, the ACC contains other offences such as fraudulent administration,⁴

2 Section 77 ACC broad definition includes individuals who hold legislative, administrative, military or judicial positions of any kind; senior managers, officers and government appointees of any government-owned or government-controlled commercial enterprise; employees of any governmental regulatory agency; and individuals who exercise a public function for, or on behalf of any public agency whether national, local or municipal.

3 There is a draft Argentine Criminal Code (Bill of Law) currently under discussion at the Argentine Congress Committee, which include ‘commercial bribery’ as a specific criminal offence (Section 259, 2 of the Draft Bill under discussion).

4 Section 173, Paragraph 7, ACC.

concealment, embezzlement, fraud and illegal financial transactions that, while not exactly characterised as private corruption, would make it possible to prosecute individuals engaged in private corruption.

It is worth mentioning that under our criminal law system, unless a specific law sets forth corporate criminal liability, only individuals may be held criminally liable. Criminal liability is based on the principle of culpability, whether by negligence or criminal intent. While all the corruption offences described above require criminal intent, there are certain circumstances in which local courts have construed reckless disregard or gross negligence as constructive criminal intent. In fact, wilful blindness could be considered constructive criminal intent.

The Constitution prohibits retroactive application of criminal laws. Based on this legal principle, legal entities could be held criminally liable for corruption offences only if the offences were perpetrated after 2 March 2018.

Under Law No. 27,401, legal entities can be sanctioned with the following penalties:

- a* fines of up to five times the amount of the improper benefit;
- b* suspension of commercial activities;
- c* special disqualification from participating in public tenders;
- d* cancellation of the company's corporate registration with the local registry of commerce;
- e* loss or suspension of governmental benefits; and
- f* publication of the conviction imposed on the legal entity.

Law No. 27,401 has also included specific guidelines for judges to define penalties. In particular, Law No. 27,401 instructs judges to consider whether a given company has a strong corporate compliance programme in place when determining the penalty for a given corporate corruption offence.

Judges will also take into account other anti-corruption regulations to analyse the behaviour of public officers, such as:

- a* the Public Employment Law (Law No. 25,164);
- b* the Ethics of Public Office Law (Law No. 25,188); and
- c* the Code of Ethics of Public Office (Decree No. 41/99).

III ENFORCEMENT: DOMESTIC BRIBERY

Pursuant to the Federal Procedural Criminal Code, the federal criminal courts are in charge of investigations related to:

- a* violation of federal laws;
- b* fraud against any federal governmental assets;
- c* obstructing public officers' regular activities;
- d* crimes occurring within federal government public offices; and
- e* foreign bribery.

In the past five years the Federal Criminal Court has accelerated investigations related to corruption offences. Making headlines in July 2018, a high-profile investigation referred to by local media as 'The Notebooks case' involved many high-profile companies and businessmen in the public works sector and public officers of the former Kirchner administration (in office for 12 years until 2015). Around 100 individuals have appeared before federal criminal courts; some of them are currently in prison awaiting trial.

In addition, the former Secretary of Public Works, José López, was sentenced to six years' imprisonment for the offence of unlawful enrichment. Mr López was found in the middle of the night of 14 June 2016 hiding bags of cash (worth around US\$9 million) and weapons in a Catholic convent in General Rodríguez, in the province of Buenos Aires. The trial court ordered the seizure of all assets he illegally acquired during his time in office. In March and April 2020 the tribunal handling the case ordered the transfer of over US\$3 million to the Ricardo Gutiérrez Children's Hospital, and over US\$2 million to the Garrahan Children's Hospital, from the seized money from Mr López's case. The money is intended to be used in order to meet different expenses that originated due to the coronavirus crisis. On 6 August 2021, the Federal Cassation Court confirmed the lower court sentence of seven years and six months' imprisonment for Mr López.

The current pandemic has triggered the need for a quick response from government authorities and consequently purchase processes to provide an adequate response to the situation. This has led to an increase in checks on direct purchases made throughout the crisis. In this context, cases of bribery or related unlawful acts have been identified in purchase processes, such as overpriced facemasks, booking hotels for the use of their beds, in which the directors were related to government officials, etc. These investigations are still ongoing.

In addition to Law No. 27,401, the Argentine Congress and the executive branch have enacted several laws and regulations to speed up corruption-related investigations and provide investigators with additional tools to prosecute acts of corruption. Among other regulations, the current legal framework includes Law No. 27,304 (i.e., whistle-blowing processes and whistle-blower protection programme); Law Nos. 27,307 and 27,308 (the reorganisation and simplification of courts); Decree No. 62/2019 (extinction of property rights on assets obtained from drug trafficking, smuggling, money laundering and corruption); and Decree No. 258/2019 (Anti-Corruption National Plan). The Anti-Corruption Office issued Resolution 27/2018 with guidelines on implementation of corporate compliance programmes. In relation to this, currently there is a Bill of Law under congressional debate that aims to reform the judiciary structure. There is no clear consensus among the parties over the proposal, and it is possible that this might eventually affect future and ongoing high profile cases involving bribes or money laundering, or both.

Moreover, within the framework of Law No. 27,401 regarding Corporate Criminal Liability, the Anticorruption Office has been entrusted with the design of an integrity and transparency registry, to contribute to the development, improvement and maturity of integrity programmes, to the exchange of good practice and to promote transparent environments in business and markets.

IV FOREIGN BRIBERY: LEGAL FRAMEWORK

Under the ACC, any offence committed within Argentine territory or abroad but with effects within Argentine territory could be pursued by local courts. Therefore, both Argentine and foreign individuals or companies could be pursued for the commission of any criminal offence punished under the ACC or specific criminal legislation. Furthermore, both foreign individuals and companies could be criminally liable for corruption offences, if such offences took place after 2 March 2018. As explained in Section II, any corruption wrongdoing committed before 2 March 2018 shall not trigger corporate criminal liability.

Law No. 27,401 provides that any individual or company with domicile in Argentina involved in foreign bribery, could also be pursued by Argentine courts. Foreign bribery has

been included as specific offence under the ACC following the United Nations Convention against Corruption (Law No. 26,097, enacted on 9 June 2006). By foreign bribery, the ACC intends any offer or delivery of money or any object of value or any other benefit such as gifts, favours or promises, to a foreign public officer either from a foreign country or an international public organisation – either personally or through an intermediary, for the purpose of:

- a* having such officer perform or refrain from performing his or her duties; or
- b* unlawfully influence in an economic, financial or commercial transaction.

In both cases, the individuals will be punished with imprisonment from one to six years and special disqualification for life to exercise public duties. As explained in Section II above, the ACC broadly defines public officer, covering not only the local public governmental officers, but also the foreign public officers who were temporarily or permanently involved in the exercise of public functions either locally or abroad.

In addition, Law No. 27,401 established corporate criminal liability for foreign bribery.

Law No. 27,401 incorporated cooperation agreements (such as leniency programmes). Neither criminal nor administrative liabilities will apply if the legal entity spontaneously denounces the offence, had implemented an adequate compliance programme before the offence occurred and returns the illegal benefit obtained from the crime.

Cooperation agreements with the Prosecutor's Office must be confidential and meet certain requirements including, without limit:

- a* specific evidence or information to identify the responsible parties or uncover facts;
- b* collaboration in the process of asset recovery;
- c* payment of the minimum fine;
- d* any damages; and
- e* disciplinary measures against individuals responsible for the offence.

V ASSOCIATED OFFENCES: FINANCIAL RECORD-KEEPING AND MONEY LAUNDERING

i Financial record-keeping

Under certain Argentine regulations including, without limitation, those set forth below, accurate book and record-keeping, effective internal company controls, periodic financial statements, and external auditing are required.

The Civil and Commercial Code requires that companies and individuals carrying out commercial activities keep accounting records, including daily operations records, inventories and financial statements and any other corporate or accounting records required by specific (activity related) applicable regulations.

The General Corporations Law No. 19,550 requires keeping corporate books (actual books vary depending on the type of corporate vehicle, but should include at least shareholders' or quota holders' meeting minutes, managers' meeting minutes and, for some corporations, a share registry book).

The Financial Administration and Control Systems Law No. 24,156 requires state-owned companies to follow a specific governmental accounting system.

The Security Markets Law No. 26,831 requires specific information on the financial statements of publicly traded companies (e.g., the equity that has been issued) and that the financial statements are audited by external auditors registered with the Argentine Securities Commission (CNV).

Regulations issued by the CNV require minimum net worth and minimum liquid assets for certain participants in public offerings (e.g., brokers).

Specific criminal offences concerning financial record-keeping are found in the ACC. The ACC establishes imprisonment of between six months and two years for the founder, director, liquidator or trustee of a corporation or cooperative or of any other entity who intentionally publishes, certifies or authorises either a false or incomplete inventory, balance sheet, report account or any other financial records report that can be used to assess the legal entity's financial condition.

Law No. 27,401 on corporate criminal liability for acts of corruption contains a false books and records offence (false balance sheets and reports with the purpose of concealing a bribery offence). Finally, the CNV, public registries and professional associations may impose sanctions on their members or entities for violating the requirement for accurate record-keeping.

ii Anti-money laundering

The main anti-money laundering (AML) regulations in Argentina are set forth in the ACC and the Money Laundering Law No. 25,246, as amended, and its Regulatory Decree No. 290/2007 (jointly, the AML Law), and the specific AML regulations issued for individuals or legal entities performing specific activities.

The administrative criminal regime established by the AML Law and the specific AML regulations is only enforceable against individuals and legal entities that directly conduct business in Argentina and are considered 'obliged persons' by these regulations.

Money laundering is defined by the ACC as the conversion, transfer, administration, sale, encumbrance over or any other use of money or other assets obtained through a criminal activity with an aggregate value exceeding 300,000 Argentine pesos, either in a single act or through the repetition of different related acts, if the possible consequence of such conduct is to grant the money or assets the appearance of having been obtained by licit means.

Concealment is defined as providing assistance to a third party who has committed a crime, including hiding, alteration and safeguard of the proceeds of the crime and acquiring or concealing money or other assets obtained by means of a crime.

In addition, the ACC punishes anyone who receives money or other assets from a criminal source, with the purpose of applying the money or assets to a transaction, making them appearing to be from a lawful source.

Finally, the ACC sets forth corporate criminal liability if a money laundering criminal offence is committed in the name of, for the benefit of, or with the involvement of the company.

The ACC defines terrorism financing as the direct or indirect collection or provision of funds or assets with the intention to use them, or with the knowledge that they will be used:

- a* to finance the commission of a crime with the purpose of terrorising the population or to define or affect the actions of national public authorities, foreign governments or agents of an international organisation;
- b* by an organisation that commits or attempts to commit a crime with the purpose established in (a); or
- c* by any individual who commits, attempts to commit or participates in any way in the commission of a crime with the purpose established in (a).

The Argentine Financial Information Unit (FIU) is the regulatory authority for money laundering control and monitoring, with a special focus on the prevention of money

laundering activities related to drug trafficking, terrorism financing, weapon smuggling, child prostitution and pornography, corruption and racially or politically motivated crimes. It has passed several regulations applicable to specific types of individuals or entities.

The FIU is also empowered to:

- a* request reports, documents, background information and any other elements it deems useful for the fulfilment of its duties from any public agency;
- b* request through the Attorney General's Office the judicial suspension of any transaction or act previously reported by certain individuals or legal entities (obliged persons) or any other related act;
- c* request through the Attorney General's Office judicial orders to search and seize documentation or items that may be useful for a given investigation; and
- d* apply sanctions to obliged persons.

The AML Law requires obliged persons to, among others things, conduct due diligence investigations and background checks on their customers (know-your-customer obligations), report on a regular basis to the FIU transactions above certain thresholds, and report any suspicious or unusual operations that come to their attention regardless of the sums involved in the transactions.

Among others, the following are considered obliged persons: financial entities under the control of the Argentine Central Bank; companies issuing traveller's checks or entities within the credit card or prepaid card system or that issue credit or prepaid cards; brokers, companies managing mutual investment funds and any natural or legal entity under the control of the CNV; and insurance companies.

The AML Law and Regulations passed by the FIU set forth specific guidelines and procedures that obliged persons must take into account to identify suspicious transactions and to prevent money laundering activities and terrorism financing, including reporting to the FIU any unusual transactions.

iii Administrative AML sanctions

Failure to comply with the requirements set forth in the AML Law and FIU regulations may be sanctioned with a fine of one to 10 times the total value of the property or transaction, provided that the wrongdoing does not constitute a more serious crime. The same penalty shall apply to the individual acting as a representative of the entity. When the real value of the property cannot be determined, fines will range from 10,000 to 100,000 Argentine pesos.

Additionally, a fine ranging from between five and 20 times the value of the assets shall be imposed on the legal entity that collected or provided goods or money, whatever their value, with the knowledge that they were going to be used by a member of an illicit terrorist association. When the act was committed as a result of recklessness or gross negligence of the legal entity, the fine shall be between 20 and 60 per cent of the value of the assets involved in the crime.

When the legal entity reveals confidential information that should only be available to the FIU for its analysis, it will be subject to a fine ranging from 50,000 to 500,000 Argentine pesos.

iv Criminal sanctions

For money laundering, penalties in the ACC include imprisonment from two to 10 years and fines from two to 10 times the value of the money or assets laundered. If the amount laundered does not exceed the minimum amount of 300,000 Argentine pesos, the wrongdoer shall be punished with imprisonment from six months to three years. The minimum punishment shall be of four years of imprisonment if the wrongdoer carries out similar acts on a regular basis or as a member of an association or organisation aimed at committing acts of similar nature.

In the case of concealment, criminal penalties shall be of imprisonment from six months to three years. If the money laundering or concealment was performed by a public officer while exercising his or her duties, he or she may additionally be subject to disqualification for three to 10 years. The same penalty shall apply to any person who acted in the practice of a profession or trade requiring a special authorisation.

Courts may seize any laundered assets.

For terrorism financing crimes, the penalties in the ACC include imprisonment from five to 15 years and fines from two to 10 times the amount involved in the perpetuation of the crime.

These penalties will be applied regardless of the occurrence of the crime to which the financing was destined, or even if such crime is committed, but the assets or funds recollected to finance the crime were finally not used for its commission. They will also be applied even when the criminal offence to be financed is out of the scope of the ACC, or when the organisation or the individual involved is outside Argentina, provided the crime to be committed is also considered as such in the country in which it took place.

VI ENFORCEMENT: FOREIGN BRIBERY AND ASSOCIATED OFFENCES

The OECD Anti-Bribery Convention entered into force in 1990. Argentina has been a member since 2000, along with 43 other countries. Every year, the OECD Working Group releases a study updated with prominent cases about the enforcement of anti-bribery laws. Some of the cases mentioned in the 2019 study of the OECD Working Group are *Odebrecht SA* (Brazil, Central and Latin America and Africa), *Biomet* (Argentina, Brazil, China and Mexico), *Siemens AG* (Asia, Africa, Europe, the Middle East and the Americas), *Embraer* (Brazil) and *Asfaltos* (Chile). All these cases have been settled with non-trial resolutions.

In the same way, Argentina submitted a report to the OECD Working Group on 26 June 2019 implementing the recommendations of the OECD Anti-Bribery Convention. The report lists cases of foreign bribery related to enforcement actions providing information on all ongoing investigations and prosecutions of bribery cases. Some include tax collection (Guatemala), oil-sector construction (Brazil), electricity transmission (Brazil), mapping system (Panama), grain export (Venezuela), oil refinery (Brazil), military horses (Bolivia), Consorcio Camisea (Peru), Contreras Hermanos (Brazil), Galileo Energy (Ecuador), Isolux (Bolivia), Tenaris (Brazil) and Unetel SA (El Salvador)

VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

Argentina has been a signatory member of:

- a the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances since 1992;

- b* the United Nations Convention Against Transnational Organized Crime since 2006;
- c* the United Nations Convention Against Corruption since 1997;
- d* the International Convention for the Suppression of the Financing of Terrorism since 2005;
- e* the OECD Anti-Bribery Convention since 2000;
- f* the Convention on the Fight against the Bribery of Foreign Public Officials in International Commercial Transactions since 2000;
- g* the Inter-American Convention Against Corruption since 1997;
- h* Inter-American Convention against Terrorism since 2005;
- i* Egmonts Group of Financial Intelligence Units since 2003 (though FIU);
- j* International Financial Action Task Force (FATF) since 2000; and
- k* Financial Action Task Force of Latin America since 2000.

VIII LEGISLATIVE DEVELOPMENTS

Relevant actors within the public sector, among others, the Anti-Corruption Office and the Ministry of Justice, have focused on criminal enforcement related initiatives. As a result, a new Procedural Criminal Code has been approved. In this new legislative regulation, prosecutors will have a strong leadership in criminal investigations and judges will rule based on the evidence obtained by prosecutors. The intention is to speed up corruption investigations by providing improved rules and procedural tools. The implementation of the new Procedural Criminal Code has begun in the provinces of Salta and Jujuy. Implementation will continue throughout Argentina during the coming year.

At the time of writing, a bill intended to amend the ACC is being discussed in Congress. If approved, it will stiffen penalties for corruption offences by, for example, eliminating the possibility of probation. This bill also contains provisions on commercial bribery.

As regards money laundering, following the guidelines issued by the FATF, the FIU is in the process of amending the regulations for obliged persons, who will be granted a larger margin of discretion to determine which clients or situations should be considered as high risk, based on an individual risk analysis independently developed by each obliged person.

The following obliged persons are already required to adopt a risk-based analysis approach:

- a* financial entities under the control of the Argentine Central Bank;
- b* companies issuing travellers' cheques or entities within the credit card or prepaid card system or that issue credit or prepaid cards;
- c* brokers, companies managing mutual investment funds and any individual or legal entity under the control of the CNV; and
- d* insurance companies.

Also, as mentioned above, there is a current debate in Congress that aims to reform the judicial structure and that could eventually affect future and ongoing high-profile cases concerning bribery and AML. The judicial reform would create new federal criminal courts both in the capital and in the provinces, among other items.

IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

Law No. 27,304 (on whistle-blower protection) allows the reduction of penalties for defendants who give information that helps in the investigation of crimes such as drug trafficking, human trafficking, corruption, bribery, etc. In a famous case, *Ciccone* (where former Vice President Amado Boudou was convicted), defendant Nuñez Carmona cooperated with the authorities providing information to reduce his penalty. In the high-profile ‘Notebooks’ case (see Section III), the Federal Cassation Court confirmed that repentant statements in criminal corruption investigations do not affect the constitutional rights of the defendants (i.e., defence rights and guarantees, such as the right to remain silent and self-incrimination), and rejected a constitutional remedy filed by accused parties in the Notebooks case, who had challenged Law No. 27,304.

Corruption crimes will be prosecuted *ex officio*, that is, they will not be driven by, or depend on actions from, private plaintiffs.

Even though agreements based on a guilty plea are not contemplated under local laws, an abbreviated judgment procedure is permitted when the penalty does not exceed imprisonment of six years and the defendant has expressly agreed to plead guilty at the beginning of the oral stage of the trial.

In certain cases, the ACC allows the suspension of trial (referred to as probation). Probation will impose on the individual subject to probation the obligation to conduct social or charity works.

Personal Data Protection Law No. 25,326 prohibits the transfer of personal data of any kind to other countries or international agencies that do not provide adequate levels of data protection. This is especially important when designing the operation of whistle-blower hotlines, and planning and conducting internal investigations. In general terms, this prohibition will not operate:

- a* in international judicial collaboration;
- b* when the transfer had been agreed within the framework of international treaties to which Argentina is party;
- c* when the transfer is aimed at international cooperation between intelligence agencies for the fight against organised crime, terrorism and drug trafficking;
- d* when the transfer is performed with the express informed consent of the data owner;
- e* when the parties execute a data transfer agreement in accordance with the regulations of the local authority; or
- f* when the company involved has established internal adequate protection to the data following local requirements.

Companies that are issuers in the local exchange market are required to have a whistle-blower hotline for employees to report any compliance breaches. The AML Law also contains provisions regarding the reduction of penalties for whistle-blowers.

Companies undergoing judicial investigations for corruption may be barred from participating in public tenders or from executing contracts with the national government. Contracts with the national government may be terminated by the latter if a company is convicted for a corruption offence (Decree No. 1023/2001).

X COMPLIANCE

The Argentine Anti-Corruption Office is in charge of developing and coordinating programmes to prevent corruption. Enforcement of anti-corruption regulations is mainly within the orbit of the federal criminal courts. Therefore, federal judges and prosecutors will be in charge of deciding whether or not a given company under investigation has adopted, controlled and supervised an adequate compliance programme (taking into consideration, among other things, the type of activity of each company, the company's size and its economic capacity).

Law No. 27,401 sets forth two sets of elements that any compliance programme should contain: mandatory elements and recommended elements.

Mandatory elements are:

- a* a code of ethics or code of conduct;
- b* specific policies or procedures to prevent criminal offences in public tenders, administrative agreements or in any other dealings with the public administration; and
- c* periodic compliance training.

Recommended elements include, without limit:

- a* periodic risk analysis and subsequent review of the compliance programme;
- b* a clear anti-corruption tone set by those who manage the company;
- c* whistle-blower channels to report misconduct or infractions;
- d* a whistle-blower protection policy;
- e* an internal investigation system that preserves the rights of the individuals under investigation and imposes effective sanctions;
- f* third-party due diligence policies;
- g* M&A due diligence policies; and
- h* the appointment of a compliance officer.

Many of the elements above are similar to the obligations for obliged subjects under the AML Law.

Owing to the relatively recent enactment of Law No. 27,401 we have not yet seen any specific precedents, and therefore it is difficult to anticipate how judges will measure the existence of an adequate compliance programme and, most importantly, what kind of specific preventive measures would be required by courts to decide what sanctions to apply.

XI OUTLOOK AND CONCLUSIONS

Under the current administration, the fight against corruption and money laundering crimes has been very active. Many individuals (company executives and former public officers) have been prosecuted, and some of them are now in prison while others are still under investigation.

Regarding money laundering, Argentina is adapting its regulations to comply with the new approach established by the FATF and is actively participating in international associations regarding this matter.

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