

# Argentine regulations against corruption

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# Situation until December 2015

- Public procurement regulations dating back to 1949; no significant amendments in almost 70 years
- No anticorruption/compliance/transparency rules applicable to companies; criminal offences attributable to individuals (criminal code)
- Populist government awarded contracts to “friends”; tailored tenders
- 4 companies concentrated about 65% of all government procured projects
- Strong influence of Chinese and Brazilian financiers and contractors

# New administration takes over

- In December 2015 a new administration takes over
- Lava Jato investigation (Brazil) started in 2014; international notoriety in 2015
- Several Brazilian companies involved in the Lava Jato case had a strong presence in Argentina
- The scandal triggered a local investigation, that extended also to projects not connected to Brazilian companies
- CEOs and public officials suspected of corruption prosecuted and imprisoned
- Government-sponsored bill on anticorruption wins widespread acceptance

# Law 27,401 – Corporate Criminal Liability (ACL)

- Argentina is signatory to the following international anti-corruption conventions:
  - Inter-american convention against corruption
  - OECD convention on combating bribery of public officials in international business transactions
  - UN convention against corruption
  - UN convention against transnational organized crime
- First law of its kind in Argentine history, establishing liability on companies
- Sources:
  - FCPA
  - UKABA
  - OECD anticorruption guidelines
  - Clean Company Law (Brasil)
  - Law 20,393 (Chile)

# Law 27,401 – Corporate Criminal Liability (ACL)

- All companies, foreign or national, with or without state participation are subject to the ACL
- Offences covered:
  - bribery and improper lobbying
  - prohibited transactions for public officials
  - illegal exactions
  - illegal enrichment of public officials and employees
  - aggravated offence of counterfeit of balance sheet

# Liability

- A successor entity can be held criminally liable for bribery committed by the target entity when it occurred prior to the merger or acquisition or other corporate conversion.
- Companies must establish appropriate anti-corruption due diligence processes in mergers or acquisitions as an element of compliance programs
- Statute of limitations 6 years
- Companies may be punished even if the person that actually perpetrated the offence is not identified

# Exemption

- Only if the person that perpetrated the offence acted on its own and exclusive interest, without generating a benefit for the company
- Facilitating payments could be characterized as bribery offences under the ACL. There are no safe harbors or exemptions, and 'grease' payments (for routine government actions) are not allowed.

# Sanctions

- A fine of two to five times the undue benefit obtained or that could have been obtained by the company;
- Total or partial suspension of activities (limit 10 years);
- Suspension of participation in public tenders or any government procurement activity (limit 10 years);
- Dissolution and liquidation;
- Loss or suspension of state benefits; and
- Publication of an extract from the conviction
- Sanctions at court discretion, based on certain pre-established parameters



# Leniency

- There is no legal obligation for corporations to self-report when they discover internal wrongdoing.
- The ACL allows for an exemption from criminal and administrative liability when the following actions occur simultaneously:
  - self-reporting as a result of an internal investigation;
  - implementation of a prior compliance program
  - the return of the ill-gotten gain.
- ACL provides that the integrity program must include:
  - a code of ethics or conduct
  - specific proceedings and rules to prevent illegal acts in the context of public procurement proceedings and bidding processes; and
  - periodic training program.

# Plea/settlement agreements

- Under de ACL the defendant cannot avoid the trial, but may reduce a term of imprisonment by up to 15 years.
- ‘Suspension of trial testing’ may be requested by anybody convicted of a crime prosecutable upon the court’s motion with imprisonment punishment that does not exceed the term of three years, and shall not imply the confession of the crime or admission of civil liability, in contrast to the commonly known ‘probation’ in other countries.
- Not available to public officials who, while holding office, participated in the perpetration of the crime nor in cases of crimes punishable by disqualification.

# Plea/settlement agreements

- ACL introduces de notion of effective cooperation agreements (ECA). The prosecution and a company can enter into an ECA, by means of which the entity is obliged to cooperate through the disclosure of information or precise, useful and verifiable data for the:
  - clarification of facts;
  - identification of authors or participants; and
  - recovery of the proceeds of the crime.
- An ECA can be signed at any time before the defendant is summoned for trial.
- Information exchange under an ECA, and the negotiation of the ECE itself is strictly confidential and a breach constitutes a federal crime.
- ECA must provide for the following conditions:
  - Payment of an amount equivalent to half of the minimum fine;
  - Providing restitution of the proceeds of the crime; and
  - Relinquishing the assets that would presumably be confiscated in case of a conviction in favor of the State
- ECA always subject to court approval