Argentina

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1 What is the typical structure of a business combination involving a publicly traded real-estate owning entity?

Corporations that operate in Argentina are regulated by Law 19,550 (the Commercial Companies Law (CCL)) and the National Civil and Commercial Code, which describe the different types of business combinations that companies can adopt within the Argentine jurisdiction, hence, their business structures. It is worth noting that the different types of legal entities are set out in Law 19,550, and for a company to be legally constituted in Argentina, the company must adopt one of these established legal types.

Which business structure is adopted depends on multiple factors, such as:

- the form of corporate governance;
- constitution requirements;
- financing instruments;
- legal protection of assets;
- need for third-party equity capital; and
- constitution and operations costs.

In Argentina the typical business combination involving a publicly traded real-estate owning entity is the so-called corporation. One of the main reasons is that the process to transfer the shares issued by a corporation, as provided by the CCL, is simple in comparison with other business combinations. This process is regulated in Articles 214 and 215 of the law and the only formal requirement is the notification of the transfer to the company's shareholders.

There are not many publicly traded real-estate owning entities in Argentina, therefore a trend in this regard is not yet identifiable. Conditions up to the year 2018 suggest that the best structure of a business combination is participation as a shareholder in a company owning real estate or participation in a real-estate investment trust (REIT) that is investing in real estate in Argentina. (See question 35.)

2 Are there are any significant differences if the transaction involves a privately held real-estate owning entity?

There are no significant differences if the transaction involves a privately held real-estate owning entity.

Nonetheless, the new Capital Market Law (Law 26,831) and its corresponding administrative regulation by the National Securities and Exchange Commission (CNV)) have regulated the merger and acquisition (M&A) transactions regarding publicly traded entities. In this regard, the Capital Market Law establishes the acquirer's obligation to make a tender offer, also called a takeover bid, in order to protect the minority shareholders against changes in control in publicly held companies. Takeover bids allow the minority shareholders to participate in the "control premium" paid to the controlling shareholders.

Another significant difference regarding publicly traded entities pursuant to Article 14, Section I, Chapter X of Title II of the General Resolution of the National Securities and Exchange Commission No. 622/13 is that an acquirer that is not a publicly traded entity must notify the Public Registry of Commerce about the transaction and obtain its approval to execute it.

The seller must follow the same procedure with the CNV, if it is a publicly held company.

3 Describe the process by which public and private real-estate business combinations are typically initiated, negotiated and completed.

In Argentina the process by which a public and a private real-estate business combinations is typically concluded, generally do not differ from those of non-real-estate related businesses in the sense that the business object does not affect the process.

However, the processes by which business combinations are concluded tend to differ, as every transaction has its own particularities and characteristics.

Nonetheless, processes of transaction usually consist of:

- pre-negotiation handled informally in any way suitable for the parties;
- creating a letter of intent (LoI) resulting from the conclusions of the pre-negotiation;
- signing of a non-disclosure agreement so as to grant the purchaser an exclusivity period during which they may conduct the corresponding due diligence on the target;
- due diligence and report pursuant to the international standards;
- negotiation of transaction documents, for example, in the form of a stock purchase agreement;
- signing of transaction documents; and
- post-closing procedures.

Other points can be considered depending on the structure of the target, for example, in the case of a publicly traded entity, the approval of the CNV.

4 What are some of the primary laws and regulations governing or implicated in real-estate business combinations? Are there any specific regulations or laws governing transfers of real estate that would be material in a typical transaction?

The following are the primary laws and regulations governing business combinations in Argentina:

- the Civil and Commercial Code (Law 26,994);
- the Capital Market Law (Law 26,831);
- the Investment Funds Law (Law 24,083);
- the Commercial Companies Law (Law 19,550);
- the Bankruptcy Law (Law 24,522); and
- the Antitrust Law (Law 25,156).

Regarding real-estate business combinations, compliance with the Rural Land Law (Law 26,737) and the Borders Law (Law 18,575) is required.

5 Are there any specific material regulations or structuring considerations relating to cross-border real-estate business combinations or foreign investors acquiring an interest in a real estate business entity?

For a foreign investor to participate in a cross-border business transaction in Argentina, the investor or the acquirer must constitute a local subsidiary in accordance with the regulations stipulated by the CCL (Law 19,550). To do so, the acquirer or investor can choose from the different combinations provided by the laws the most common in Argentina being corporations and limited liability companies (LLCs).

In recent years, single-owner corporations (SAU) have acquired certain popularity among investors and acquirers due to a new regulation enacted for this type.

Another option is to open a branch of a foreign company in Argentina. Branches must be duly organised under the laws of their country of origin and register the articles of association or bylaws with the Registry of Public Commerce.

Moreover, in December 2012, the National Congress enacted Law No. 26,737, which sets out the Protection Regime of the national domain over the property, possession or control of rural land in Argentina (the Protection Regime).

The Protection Regime considers as foreign ownership to be purchase, transfer or assignment of possession rights of rural lands to be made in favour of foreign persons. "Foreign persons" are foreign individuals and legal entities controlled by foreign capital, subject to certain requirements set out under the law. Moreover, the Protection Regime provides some specific exceptions for foreign persons, for instance, for foreign persons with 10 years of continuous, permanent and verified residence in Argentina.

As from the effective date of the Law (5 January, 2012), any purchase, transfer or assignment of possession rights of rural lands in favour of foreign persons must be previously authorised by the Argentine Registry of Rural Land.

The main restrictions under the law are:

- foreign persons (physical or legal) cannot own or possess more than 15 per cent of the rural lands in Argentina;
- foreign persons (physical or legal) of the same nationality cannot own or possess more than 30 per cent of the 15 per cent mentioned above;
- foreign persons (physical or legal) can own only up to 1,000 hectares in the "nucleus area" (as defined under decree no. 274/2012) or the "equivalent surface" in Argentina;
- foreign persons (physical or legal) cannot own or possess rural lands containing, or bordering, large and permanent bodies of water, unless specifically authorised; and
- foreign individuals or legal entities cannot own or possess rural lands which in border security zones, unless specifically authorised.

According to the law, all acts executed in violation of it are absolutely and irrevocably null and void and create no right of indemnification in favour of the authors and participants in the illegal act.

The law also provides that the Argentine Registry of Rural Land is empowered to initiate administrative proceedings to investigate possible breaches of the Law. The potential violator must be notified of the results of the investigation, following which, he or she will have 10 business days to collect and submit evidence. The National Director of the National Register of Rural Land will analyse the incident and apply a penalty he or she deems appropriate (if any). The penalties may be in the form of warnings, fines and special disqualification orders ranging from six months to two years.

Finally, the purchase of real-estate property by foreign persons in frontier security zones (that is, zones that are between 150 kilometres from land borders and 50 kilometres from shorelines) is subject to prior and special authorisation issued by the National Commission for Security Zones.

6 What territory's law typically governs the definitive agreements in the context of real-estate business combinations? Which courts typically have subject-matter jurisdiction over a real-estate-related business combination?

In Argentina, as a general rule, there is freedom regarding the choice of law and jurisdiction, pursuant to Title IV of the National Civil and Commercial Code, unless a treaty regarding this subject between the countries from which the parties are nationals is in force. In such case, said treaty will be applicable.

Nonetheless, real-estate transactions are an exception to the general rule, since, pursuant to Articles 2,609 and 2,667 of the National Civil and Commercial Code. Whenever a conflict arises regarding property in Argentina, Argentine law will govern the transaction and Argentine courts will rule over the dispute. Civil courts will have subject-matter jurisdiction over a real-estate business combination.

It is worth noting that agreements entered into in a foreign country ruling over property situated in Argentina's jurisdiction, will be enforceable as if they were entered into in Argentina, considering the above-mentioned.

7 What information must be publicly disclosed in a public-company real-estate business combination?

Publicly held entities in Argentina are subject to rule of the CNV, which has established the general rule of "full disclosure" stating that all relevant information regarding publicly held business combinations must be disclosed to the public. The "full disclosure" general rule stems from the Transparency Regime of the Public Offer administrative ordinance (ordinance 677/2001) and from the Periodic Information Regime (Title IV of the NT 2013 by the CNV).

The "full disclosure" general rule applies to all publicly held business transactions regardless of the size of the transaction or the form in which they are instrumented.

8 Give an overview of the material duties, if any, of the directors and officers of a public company towards shareholders in connection with a real-estate business combination. Do controlling shareholders have any similar duties?

Directors of local corporations are subject to a standard duty of loyalty and care (section 59 of the CCL). Noncompliance with this standard might result in unlimited and joint personal liability for the damages caused by the director's action or omission.

Pursuant to section 268 of the CCL, the president is the legal representative of the company; although the company's bylaws may authorise the performance of one or more directors. The legal representatives bind the company for all acts that manifestly exceed the corporate's main purpose. This is applicable even in violation to the joint legal representation regime, in cases of obligations being assumed as securities, agreements between absent parties or adhesion contracts, when the other party is aware that the act infringes on the joint legal representation (section 58 of the CCL).

Regarding publicly held entities, Article 78 of the Capital Market Law (Law 26,831) establishes, the principle of loyalty of directors. Among other obligations, Article 78 states that directors must avoid any actions that may be contrary to the entity's interests.

Aside from the principle of loyalty of directors, compliance with the "full disclosure" general rule is relevant. Also, Article 102 of the Capital Market Law states that directors and officers must comply with the highest standards of confidentiality regarding information not yet disclosed to the public and that might affect an ongoing negotiation or issuance of shares.

9 What rights do shareholders have in a public-company real-estate business combination? Can parties structure around shareholder dissent or rejection of a real estate business combination, and what structures are available?

In any public-company business combination shareholders have, according to Argentine law, the right to dissent or object to any kind of transaction, as long as this right is executed at the corresponding shareholder's meeting.

A shareholders' meeting is mandatory according to the Argentine Companies Law (Law 19,550). During the meeting, shareholders can object to or dissent from specific transactions, but objections have no effect unless the dissenting opinion is shared by the majority of those holding the right to vote at the shareholders' meeting. The majorities' configuration will depend on the company's bylaws of the company, as will the quorum needed for the shareholder's meeting to take place.

Shareholders in transactions involving private companies in Argentina can agree to drag-along and tag-along rights. The purpose of such rights is to protect the specific rights of the majorities and minorities within companies. Basically, the drag-along right gives the majority the faculty to force minorities to sell their shares in certain cases, while the tag-along right gives minorities the right to sell their shares under the same conditions as the majority would in cases of a business combination.

Regarding publicly held companies, the acquisition public offer, regulated by the new Capital Markets Law (Law 26,831), establishes the obligation of the purchaser to make his offer to all shareholders, regardless of the amount of shares they have, in order to respect the right to a fair price.

Argentine law also permits pre-emptive rights to be established to enable certain shareholders to acquire new shares prior to their issuance. Finally, in direct relation to this pre-emptive right, Argentine law gives shareholders the right to acquire remaining shares – that is, the product of the equity issuance – in cases where all of the shareholders have not exercised their pre-emptive rights. This right is known as the "right to accrue".

10 Are termination fees typical in a real-estate business combination, and what is their typical size?

Termination fees in business combinations in Argentina are common, whether it is a real-estate-related transaction or not. Said fees are generally implemented with a two-fold objective. On the one side, it gives the acquirer the right to prematurely end transaction before it is perfected in certain cases, and, on the other hand, it gives the seller enough motivation to avoid calling off transaction.

Reasons why a termination fee is triggered, include:

- noncompliance with the agreement;
- the occurrence of a fortuitous or force majeure event; and
- impossibility to meet all of the conditions prior to the closing of the transaction.

Termination fee provisions are usually included in letters of intent and option or preliminary agreements.

Regarding the amount of the termination fee, it is impossible to establish a formula or method to calculate it, since each transaction has its own particularities, among which we can find the most diverse kinds and amounts of termination fees. Nonetheless, it is reasonably common to establish the amount of said fee at 2 or 3 per cent of the amount of the transaction. National courts may under certain circumstances, rule a termination fee as either acceptable or abusive and so invalid.

Sometimes a fixed amount is agreed as liquidated damages.

11 Are there any methods that targets in a real-estate business combination can employ to protect against an unsolicited acquisition? Are there any limitations on these methods?

In Argentina, there are no methods that targets can employ to protect themselves against unsolicited acquisition offers, other than to withhold consent. Targets can be approached by offerors at any given time and under any given circumstances, but, ultimately, the target must give its consent in order for a transaction to be perfected.

Nonetheless, in case of unsolicited acquisitions, shareholders of a targeted publicly held company have the right to demand compliance with the requirements of the new Capital Markets Law (Law 26,831) regarding fair price and equitable treatment of shareholders.

12 How much advance notice must a public target give its shareholders in connection with approving a real-estate business combination, and what factors inform this analysis? How is shareholder approval typically sought in this context?

Shareholders' approval of a business combination in relation to a publicly held company in Argentina is generally sought through the majority of votes in a general shareholders' meeting. The necessary quorum and the configuration of the majorities should be established in the company's bylaws.

Regarding the advance notice that a public target should give its shareholders in order to approve or reject the business combination at hand, there is no specific amount of time, but an extraordinary shareholder's meeting is generally called.

Finally, in relation to the documentation and requirements needed during the shareholders meeting, there is no specific regulation in this regard, but generally, all the documentation related to the transaction should be provided to the shareholders.

13 What are some of the typical tax issues involved in real-estate business combinations and to what extent do these typically drive structuring considerations? Are there certain considerations that stem from the tax status of a target?

In Argentina, there are three different levels of government authorities that can levy taxes, the main ones being the federal government and provincial governments. Hence, the acquisition of real-estate property within the scope of a real-estate business combination may be subject to different taxes imposed by the different levels of government simultaneously.

Regarding federal taxes, the sale of real-estate property performed by legal entities – both foreign and local – shall be subject to income tax at a 35 per cent rate on the purchase price. Foreign residents shall pay the due tax by means of a withholding regime. The sale of real-estate property owned by a foreign resident is levied at a 35 per cent rate over 50 per cent of the gross value paid (an effective rate of 17.5 per cent), or the purchase price minus expenses incurred to obtain and maintain the source of income (ie, 35 per cent over the net value). The beneficiary may choose which of the taxable bases mentioned will be applied.

However, the sale of real-estate property by individuals – both foreign and local – is subject to the tax on real-estate transfers at a 1.5 per cent rate of the purchase price.

As a principle, the sale of real-estate property is not subject to VAT. Nevertheless, if the seller of a construction built on his or her own property is considered to be a 'construction company' pursuant to the definition set forth by the VAT Law, said principle will not apply and the sale of the building on the property may be subject to VAT (the value of the building or certain parts of it and not the land could be subject to this tax). The general rate is 21 per cent; however, a reduced rate of 10.5 per cent may be applied to the sale of residential real-estate property.

Concerning provincial taxes, the acquisition of real-estate property may be subject to stamp tax. This tax is levied on the execution of agreements and it is estimated on the economic value of the agreement. The applicable rate differs from one jurisdiction to another, ranging from 1.5 per cent to 5 per cent.

14 What measures are normally taken to mitigate typical tax risks in a real-estate business combination?

The most common measures to mitigate tax liabilities when acquiring a real-estate portfolio are:

- fulfilling the procedure outlined in Act 11,867 on the transfer of going concerns, which involves providing the tax authority with a notification;
- the creation of an escrow account to cover any potential tax liabilities;
- the buyer requisitioning an indemnity letter against potential tax claims from the seller; and
- holding business premises.

15 What form of acquisition vehicle is typically used in connection with a real-estate business combination, and does the form vary depending on structuring alternatives or structure of the target company?

Acquisitions in Argentina may be structured around multiple and diverse vehicles or types of entities. Such types are considered thoroughly in the CCL. However, the most common types of entities are the corporations and the LLCs. In recent years, due to new regulations, the "simplified corporation" has acquired popularity, but, up to this date, its use is no yet widespread, so we cannot guarantee its effectiveness regarding transactions of considerable size.

The use of corporations and LLCs to structure a business combination is very common, since both provide many benefits. Their main difference consists the joint liability of equity holders of LLCs.

Regarding tax issues, both types have similar, if not the same, conditions. For instance, corporations and LLCs share the same considerations when it comes to federal income tax, gross income tax and social security taxes.

There are, however, other types of companies in Argentina that provide a wider range of benefits regarding tax issues, such as the simplified corporations, or non-regular companies, but these types of companies are recommended for small enterprises and entrepreneurs. Up until 2018, local investment trusts had tax benefits, but with the new regulation, the situation has been mitigated, constituting a similar situation than that of the above-mentioned types of companies.

The same can be said regarding buyer's liability, since corporations and LLCs were created in order to protect the shareholders and equity holders.

Regarding other considerations, corporations typically have easier access to credit loans and the public offer regime.

16 What issues typically face boards of real-estate public companies considering a take-private transaction? Do these considerations vary according to the structure of the target?

In Argentina, boards of public companies considering a take-private transaction generally have to face issues such as:

- compliance with all permissions and regulations regarding the transaction;
- value and price of the assets involved;
- advantages and disadvantages of the transaction;
- financial and tax issues regarding the transaction; and
- the risks involved in the business combination.

Aside from the above-mentioned issues, specifically with respect to the transaction discussed, boards of directors generally have to face other issues in the context of business combinations, such as the designation of officers and directors, increase or decrease of the share capital, regime of shareholders' and directors' meetings, etc.

Finally, and most importantly, boards must consider the price to make the acquisition public offer. It is highly recommended that financial, legal and technical advice is taken to set this price.

17 How long do take-private transactions typically take in the context of a public real-estate business? What are the major milestones in this process? What factors could expedite or extend the process?

In Argentina, in order for a publicly held entity to go private, the entity must withdraw from the public offer regime. For this to happen, the decision must be based on one of the reasons established by the CNV. Among the most important reasons, is the decision to withdraw from the public offer regime voluntarily after such a decision is adopted at shareholders' meeting, the withdrawal due to merger or acquisition, and the withdrawal due to bankruptcy.

Depending on the reason for the withdrawal, the procedure will be different as well as its duration. However, the most common cases for withdrawal from the public offer regime consist on the voluntary withdrawal or the withdrawal due to bankruptcy.

Both procedures contemplate the requirement of holding of a public offer for acquisition of shares (OPA). In Argentina, holding a OPA takes around 10 to 12 months, depending on the size of the transaction and other factors.

18 Are non-binding preliminary agreements before the execution of a definitive agreement typical in real-estate business combinations, and does this depend on the ownership structure of the target? Can such non-binding agreements be judicially enforced?

In Argentina, non-binding preliminary agreements such as LOIs or memoranda of understanding are very common, even though there is no legal obligation regarding their implementation. Generally, this does not depend on the target's structure, since every kind of structure involved in a business combination may use this kind of instrument. Nonetheless, the content of said instruments may vary depending on the kind of structure of the parties involved in the transaction.

Non-binding documents are generally non-enforceable through judicial means, since their very nature consists of their non-enforceability, but, in certain and specific cases, non-binding documents may be enforceable, partly or in full.

Enforceability will depend on many factors, with the intention of the parties involved towards the enforceability of the instrument being the most important.

19 Describe some of the provisions contained in a purchase agreement that are specific to real-estate business combinations? Describe any standard provisions that are contained in such agreements.

Regarding provisions specific to real-estate business combinations, purchase agreements generally contain, within the representations and warranties chapter, provisions such as:

- the good, valid and marketable title to all real property, free and clear of all encumbrances, other than those permitted;
- the absence of proceedings, claims, disputes or conditions affecting any real property that might curtail or interfere with the use of such property;
- the absence of any governmental decree or order establishing the condemnation, expropriation or taking of the whole or any portion of the material real property;
- the absence of notifications regarding the violation of the real property of any applicable building, zoning, health, sanitary or other law, ordinance or regulation;
- financial capacity of the buyer at the closing of the transaction; and
- compliance with all regulatory and environmental regulations.

20 Are there any limitations on a buyer's ability to gradually acquire an interest in a public company in the context of a real-estate business combination? Are these limitations typically built into organisational documents or inherent in applicable state or regulatory related regimes?

In Argentina, the only limitation on a buyer's ability to gradually acquire an interest in a public company consists the offerer's obligation to make a takeover bid to all shareholders in cases where the buyer intends to acquire control of the company. The CNV expressly states that all shareholders with voting rights or pre-emptive rights must receive a takeover bid from the buyer that intends to acquire control the entity. The price of the takeover bid will be adjusted to the fair price standards, also established by the CNV.

21 Describe some of the key issues that typically arise between a seller and a buyer when negotiating the purchase agreement for a real-estate business combination, with an emphasis on building in certainty of closing? How are these issues typically resolved?

When negotiating the purchase agreement for a real-estate business combination, some of the typical issues that may arise include:

- the existence of the good, valid and marketable title to all real property, free and clear of all encumbrances;
- the purchase price and its corresponding adjustment, if any;
- the provisions of the escrow agreement, or any other holdback agreement; and
- the termination rights and fees.

Such issues are generally resolved through:

- the conditions precedent;
- covenants;
- representations and warranties;
- indemnification; and
- the escrow agreement.

22 Who typically bears responsibility for environmental remediation following the closing of a real-estate business combination? What contractual provisions regarding environmental liability do parties usually agree?

In Argentina, the owner of real estate bears the responsibility for environmental remediation prior to the closing of a real-estate transaction. Likewise, in real-estate business combinations, the seller holds responsibility for such remediation and generally agrees to keep the purchaser harmless. As with most provisions, the responsibility in this regard can be negotiated, but, as stated above, it is the seller who generally warrants the compliance with all environmental laws, decrees and regulations.

Provisions regarding environmental liability generally include the following sections:

- the property is in material compliance with all applicable environmental law;
- the seller has not received any communication (written or oral), whether from a governmental body, citizen groups, employee or otherwise, that alleges that the property is not in full compliance with any applicable environmental law; and
- no proceedings or orders are at closing date effective in connection with environmental, health or safety matters requiring investigation, clean-up, remediation, cure, work, constructions or material capital investments or expenditures.

Following closing date, the buyer will bear with all responsibilities for environmental remediation unless stated otherwise.

23 What other liability issues are typically major points of negotiation in the context of a real-estate business combination?

Major issues regarding the liability of the parties involved in the context of a real-estate business combination generally include:

- the good and valid title to all real property;
- compliance with all permits regarding the property and the construction;
- labour risks;
- hidden defects; and
- warranty against eviction and third parties claims.

24 In the context of a real-estate business combination, what are the typical representations and covenants made by a seller regarding existing and new leases?

In real-estate business combinations, the buyer takes over all the seller's obligations towards third parties as agreed on the transaction documents. In this context, the buyer assumes the responsibilities assumed by the seller either as landlord or as tenant.

Hence, the most common representations agreed by the parties involved in the transaction in this regard, contemplate the validity of the lease agreements, the due payment of the rent and corresponding taxes – either from the landlord's or the tenant's perspective – and the absence of claims by the other party involved in the lease agreement or third parties.

Covenants in this regard may include the obligation of the seller not to enter into any new lease agreements between the end of negotiations and the end of the transaction.

Change of control in either landlord or tenant should not be expressly forbidden.

25 Describe the legal due diligence required in the context of a real-estate business combination and any due diligence specific to a real-estate business combination. What specialists are typically involved and at what point in the transaction are the various teams typically brought in?

In Argentina, due diligences required in the context of a business combination, whether a real-estate-related one or not, take place before the transaction. During the pre-transaction period, the seller will, at request of the buyer, set up a data room which can be either in physical or virtual form. The data room will contain the legal, financial, accounting, labour, tax, corporate and real-estate information that can be of interest to the buyer and the transaction at hand.

The process will consist on the analysis of said information by the corresponding and qualified professionals and, based on said analysis, the drafting of a "due diligence report", which will include all the relevant information of the seller, including all its properties.

Due diligences, generally include lawyers, financial and accounting advisers, representatives and technical advice, should it be needed.

The time at which these groups are brought in varies greatly depending on the transaction and the approach adopted.

26 How are title, lien, bankruptcy, litigation and tax searches typically conducted? On what levels are these searches typically run? What protection from bad title is available to buyers and does this depend on the nature of the underlying asset?

Titles to all real property are registered at the corresponding Registry of Real Property of the jurisdiction in which the property is located. The titles must be requested at the said registry and reviewed by the corresponding professionals in order to detect any inconsistencies or irregularities.

Regarding bankruptcy and litigation matters, the information is registered diffusively since there is no single registry in this regard. However, the Registry of Trials in each jurisdiction is the trustworthiest place to begin the search.

Concerning tax matters, there is no registry of pending taxes but, depending on the jurisdiction and the taxed asset or action, there are several web pages or offices specific information regarding specific taxes can be requested. Generally, the main offices that provide this information in the city and the province of Buenos Aires are the Federal Administration of Public Income, the Takings Agency of the Province of Buenos Aires, and the General Administration of Public Income.

Tax and litigation indemnities are generally agreed while negotiating the terms of the transaction.

27 Do sellers of non-public real-estate businesses typically purchase representation and warranty insurance to cover post-closing liability?

In Argentina, as well as in Latin America, insurance for representations and warranties is not common. Insurance companies do not provide this service except in unique and specific circumstances.

Nonetheless, there have been attempts to implement this kind of insurance for M&A deals and insurance companies, as well as businessmen interested in these kinds of transactions, believe that in the future, this kind of insurance might be implemented in Argentina.

28 What are some of the primary agreements that the legal teams customarily review in the context of a real-estate business combination, and does the scope vary with the structure of the transaction?

Legal teams generally review agreements such as the lease, management, supply and service agreements, among others. Also, titles and permits are always reviewed.

The scope of the review shall mainly depend on the corporate structure of the business combination. Said structure will determine the corporate documentation to be reviewed.

29 What are the typical remedies for breach of a contract in the context of a real-estate business combination, and do they vary with the ownership of target or the structure of the transaction?

In Argentina, the breach of a contract in the context of a business combination may be remedied through the implementation of termination or rescission rights. Some of the most typically used are the termination fees, liquidated damages or reduction of the purchase price among others.

M&A deals in Argentina generally implement termination fees, regardless of the structure of the business combination.

30 How does a buyer typically finance real-estate business combinations?

A buyer can finance business combinations through loans granted by financial institutions. These can be either banking institutions or private equity institutions.

Also, with the purpose of promoting certain aspects of the economy, the federal, provincial and municipal governments have financed projects in the last years.

Generally, in real-estate business combinations, mortgages are agreed as warranty of payment in favour of the lender.

31 What are the typical obligations of the seller in the financing?

Generally, in Argentina, the seller does not have any sort of obligation towards the buyer or the lender in this regard, other than the obligation to operate in good faith and the obligation to deliver the property on the agreed date and terms, particularly if the said property is going to be mortgaged in favour of the lender.

The main reason for this is that the seller is not a creditor nor a debtor in the relationship. Finally, it is worth noting that, generally, the seller does not have a saying regarding the method through which the business combination is financed.

32 What repayment guarantees do lenders typically require in the context of a property-level financing of a real-estate business combination? For what purposes are reserves usually required in the context of property-level indebtedness?

In real-estate-related business combinations, lenders generally request a mortgage over the property that is being acquired so as to guarantee the corresponding payment, since this is the fastest and easiest way to do so.

The mortgage can be set upon a property other than the one being acquired, but since the loan is intended and directed towards

the acquisition of said asset, it is expected that there will be a certain connection between the amount of the loan and the amount of the purchase.

Other repayment guarantees include borrower's guarantor or sponsor regarding the obligations towards the lender.

33 What covenants do lenders usually insist on in the context of a property-level financing of a real-estate business combination?

Lenders generally insist on covenants such as:

- loan exclusivity in relation to the purchase;
- loan-to-value covenants;
- compliance with applicable legislation;
- governmental licences;
- property-related covenants like maintenance of insurance and maintenance of the property; and
- information covenants.

Covenants requested by lenders may vary greatly depending on the size of the transaction and the loan.

34 What equity financing provisions are common in a transaction involving a real-estate business that is being taken private? Does it depend on the structure of the buyer?

In Argentina, take-private real-estate-related business transactions are not common, so it is difficult to establish a pattern in equity financing provisions.

However, in the case of a transaction with the aforementioned characteristics, common provisions shall include:

- a buyer's representation to the seller concerning the terms of its committed debt financing;
- a covenant of the buyer to obtain financing;
- a covenant of the seller to cooperate with the buyer in obtaining financing; and
- financing conditions, such as breakup fees or reverse breakup fees.

35 Are real-estate investment trusts (REITs) that have tax-saving advantages available? Are there particular legal considerations that shape the formation and activities of REITs?

In Argentina REITs, as known in other parts of the world, do not exist. Other similar investment vehicles as trust funds, share certain basic aspects of REITs, but none of their characteristics makes them similar enough to REITs.

With recent changes regarding investment legislation, analysts agree that the situation is favourable enough for REITs that they will appear and develop.

Investors worldwide are looking forward towards the development of this specific investment vehicle in Argentina, due to the possibilities they offer and their compatibility with the country's economic situation.

36 Are there particular legal considerations that shape the formation and activities of real-estate-focused private equity funds? Does this vary depending on the target assets or investors?

Real-estate-focused private equity funds are not fully developed in Argentina. Hence, it is difficult to establish a pattern for the formation and activities of this kind of fund.

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