

Business crime and investigations in Argentina

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Country Q&A | Law stated as at 01-Jun-2020 | Argentina

A Q&A guide to business crime in Argentina.

The Q&A gives a high level overview of matters relating to corporate manslaughter, environmental and health and safety offences. This Q&A is part of the global guide to financial and business crime law.

To compare answers across multiple jurisdictions, visit the business crime *Country Q&A tool*.

For a full list of jurisdictional Q&As visit global.practicallaw.com/financialcrime-guide.

Corporate manslaughter

Regulatory provisions and authorities

1. What is the main legislation relevant to corporate manslaughter?

Criminal provisions

There is no specific legislation in Argentina relevant to corporate manslaughter under the criminal law. Penalties for legal entities are only intended for some specific offences (such as corruption crimes, money laundering, terrorist financing offences, insider trading, fraud, bribery and so on) (see *Financial crime in Argentina: overview: Question 35*).

In relation to crimes committed against life, only individuals can be criminally liable.

Civil liability

From a civil law perspective, the Civil and Commercial Code regulates both the liability of legal entities as well as the individual liability of any natural persons of such bodies responsible for causing damage. Section 1716 of the Civil and Commercial Code states that the violation of the duty of not harming another will give rise to the requirement to facilitate repair for any damage caused. Therefore, the liability of legal entities for the death of a person by gross negligence may arise due to the damage generated from its unlawful conduct, such as:

- Non-compliance incurred by the legal entity.
- Responsibility of the principal for the act of the dependent.
- Where the event was caused due to a risky thing or activity owned by or under the custody of the legal entity.
- Where the acts were caused by the directors or administrators of the legal entity.

(Section 1763, Civil and Commercial Code.)

In all cases, for liability to be shown and damages attributed, certain generic requirements must be proved (unlawfulness, the damage itself, the relationship between the damage and the unlawfulness and the attribution factor). Furthermore, and given that legal entities lack all subjectivity (it is unnecessary to assess its will or fault), the attribution factor of objective liability is applied.

Offences

2. What is the specific offence that can be used to prosecute corporate manslaughter?

In an investigation regarding the death of a person by gross negligence on the part of a company, the offence known as "manslaughter" is the one infringed. This offence applies only for individuals and not for companies.

The Criminal Code establishes that such an offence will be committed when "any person who by recklessness, negligence or lack of skill in his trade or profession, or by failure to observe the regulations or duties of his position, causes the death of another" (*section 84*).

For the civil law perspective, see *Question 1, Civil liability*.

Defences

3. What defences or exemptions are available and who can qualify?

Criminal law

There are no defences or exemptions from criminal liability for wrongful death from gross negligence under the Criminal Code.

Civil Liability

From a civil law perspective, although the burden of proof to show the elements of civil liability lie with the claimant, there are certain exceptions that could be invoked by those who intend to be exempted (in this case, the legal entity) to avoid the attribution of damages. These include, for example:

- That the damage was due to the act of the victim.
- Fortuitous case.
- That the damage was caused due to a third party's acts.
- That the risk was taken against the express or presumed will of the owner.

Enforcement

4. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate manslaughter? What are the authorities' powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

Prosecution authorities

The national criminal courts are the competent courts and have the powers of prosecution, investigation and enforcement regarding cases of manslaughter.

The authority of a national judge is geographically limited to Argentina.

To obtain proof abroad, the authorities must make a request addressed to the competent judge abroad and in accordance with the procedure established by the Ministry of Foreign Affairs.

From a civil law perspective, civil courts (both national and local or provincial) are competent to hear a claim for damages based on the liability of legal entities for the death of a person by gross negligence.

Prosecution powers

The courts have broad powers under the Code of Criminal Procedure, including the power to:

- Request reports from both public and private agencies, for which they must comply, under the criminal penalty for disobedience.
- Interview any person who has information relevant to the investigation.
- Order numerous procedural and precautionary measures aimed at avoiding and preventing obstruction to investigations and the escape of criminals. These include:
 - lifting the secrecy order;
 - detaining the accused;
 - prohibiting an individual from leaving the country;
 - seizing and freezing assets;
 - issuing search warrants; and
 - confiscating assets.

These measures can be ordered at any time during the investigation as required, although they must be performed through a resolution with proper grounds.

All national and provincial police forces are at the disposition of the national judiciary, as court assistants, to perform, execute and/or comply with its orders.

From a civil law perspective, the civil courts (both national and local or provincial) have powers, on the request of any of the parties, to order the production of evidence, including (among other things):

- Hearing witnesses.
- Requesting information to public and private entities.

Furthermore, civil courts also have powers to issue precautionary measures to preserve evidence and assets.

Powers of interview

Under the Criminal Procedure Code, both judges and prosecutors have the power to conduct interviews. Nevertheless, police forces can perform or execute witness interviews by the order of the authorities. Accused people statements can only be performed by the judge.

Powers of search/to compel disclosure

See above, *Prosecution powers*. As court assistants, all national or provincial police forces must carry out this on the court's behalf.

Powers to obtain evidence

See above, *Prosecution powers*. Courts have broad powers to obtain evidence. In that regard, all national/provincial police forces must assist courts with that task (for example, it is very common for Courts to order to the police to carry out "extensive intelligence and operations tasks").

Power of arrest

See above, *Prosecution powers*. As court assistants, all national or provincial police forces must carry out this on the courts behalf.

Court orders or injunctions

See above, *Prosecution powers*. As court assistants, all national or provincial police forces must carry out this task on the court's behalf.

5. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

In any criminal proceeding in Argentina, the prosecutor must file an allegation against the defendant and the judge decides whether to charge or dismiss the case.

The exercise of the action is mandatory whenever it occurs and a prosecution will not be suspended, interrupted or terminated unless where specifically provided for by law.

The only causes for termination are:

- Death of the defendant.
- Amnesty.
- Application of the statute of limitations.

For minor cases, prior to finding a hypothetical conviction, defendants may be subject to an alternative method of disposal called "*suspensión de juicio a prueba*" (similar to the probation process in US) which requires them to compensate for the damage as much as possible and to execute certain activities in accordance with an agreement with the prosecutor for a certain period. Once complied with, the criminal case is dismissed.

Conviction and sanctions

6. What are the penalties for corporate manslaughter?

Criminal law

The punishment for manslaughter can only be imposed on individuals. Companies are not criminally liable for corporate manslaughter.

The Criminal Code establishes that such an offence will be punishable with imprisonment for six months to five years and special disqualification (where applicable) of five to ten years (*section 84*).

Section 41 of the Criminal Code establishes that, when calculating the penalty, the following must be taken into consideration:

- The nature of the deed and of the means employed in its commission, as well as the extent of the damage and danger created thereby.
- The age, education, habits and previous conduct of the individual, the nature of the reasons which led them to commit the crime, especially their poverty or their difficulty to obtain necessary sustenance for themselves and their family, the extent of their participation in the deed, their criminal and personal records, as well as their personal relation, character of the persons and the circumstances of time, place, occasion and others, which may indicate how dangerous they may be.
- The judge must take direct and visual cognisance of the defendant, the victim and the factual circumstances to the extent necessary for each case.

In any case, the sentence must determine the seizure of the goods used to commit the crime and that of the goods and product or profit obtained from the crime for the benefit of the national state, of the provinces or municipalities, except for the rights of restitution or compensation of the victim and third parties.

Civil liability

From a civil law perspective, if a legal entity is held liable in the context of a claim for damages for the death of a person by gross negligence, damages will be attributed against the referred entity.

The amount of damages attributed will vary on a case-by-case basis and will depend on the evidence proven throughout the trial as well as the parameters set out in previous cases by higher courts. Furthermore, in cases where consumers are involved, punitive damages could be attributed to the legal entity if found liable (*section 52 bis, Consumer Protection Law*).

Safeguards

7. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

Civil liability

In criminal proceedings, the judge can opt to keep the investigation secret, without allowing the parties to know the measures that are being carried out. However, this should be an exception for cases where there is a risk of escape and/or obstruction of the investigation by any of the accused.

After a final ruling, the defendant has the right to appeal before the national superior court (Court of Appeal) and eventually before the National Supreme Court for judicial review.

Civil liability

From a civil law perspective, if civil liability is attributed to the legal entity by a first instance judge, the entity will have a right to appeal the decision, which will be reviewed by a second instance court (mainly, one of the provincial Civil Court of Appeals). In addition, in extraordinary cases, the local Supreme Court of the province in which the trial is taking place and/or the National Supreme Court could take part in the trial as a final review.

Health and safety offences

Regulatory provisions and authorities

8. What are the main regulatory provisions and legislation relevant to health and safety offences?

There are no specific corporate offences for matters of health and safety under the criminal law. For any damage or injury that a person may suffer, the general offences established in the Criminal Code should be applied (for example, crimes against life, crimes against psychological integrity, homicides, and so on).

From a labour law standpoint, the Health and Safety at Work Act (Act 19,587) regulates the overall conditions of safety and hygiene that employers must comply with. Work-related illnesses or accidents are regulated by Law 24,557.

Offences

9. What are the specific offences relating to health and safety?

Law 25,212 imposes sanctions for any breach of work-related obligations. Regarding safety and hygiene, Law 25,212 provides that that employer will commit:

- A minor offence for "any action or omission that breaches the safety and hygiene at work regulations that affect formal requirements, provided they are not considered serious or very serious offences".
- A serious offence for "any action or omission that imply a breach of the health, safety and hygiene at work obligations, provided they are not very serious offences".
- A very serious offence for "any action or omission that imply a breach of the health, safety and hygiene at work obligations, that originate a severe and imminent risk to employee's health".

Defences

10. What defences or exemptions are available and who can qualify?

There are no defences or exemptions for work-related obligations.

Enforcement

11. Which authorities have the powers of prosecution, investigation and enforcement in cases of health and safety offences? What are the authorities powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

Prosecution authorities

Under the criminal law, the national criminal courts are the competent courts and have the powers of prosecution, investigation and enforcement.

From a labour law standpoint, the Ministry of Labour (*Ministerio de Trabajo*) investigates and verifies compliance with Argentina's work safety and hygiene regulations. Once a fine is imposed, the decision can be appealed before a labour court.

The relevant authorities do not interact with overseas regulators.

Prosecution powers

See [Question 4](#) and [Question 11](#).

Powers of interview

See [Question 4](#) and [Question 11](#).

Powers of search/to compel disclosure

See [Question 4](#) and [Question 11](#).

Powers to obtain evidence

See [Question 4](#) and [Question 11](#).

Power of arrest

See [Question 4](#) and [Question 11](#).

Court orders or injunctions

See [Question 4](#) and [Question 11](#).

12. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

For the criminal law standpoint, see [Question 5](#).

From a labour law perspective, generally, the Ministry of Labour will inspect the case and determine the existence of a breach (if any). In some cases, when dealing with minor breaches the Ministry of Labour will give the employer a few days to produce evidence or provide an explanation. If the offence is severe, the Ministry of Labour starts a proceeding when the company is requested to offer its defence.

Conviction and sanctions

13. What are the sanctions for health and safety offences?

Criminal law

Any person who by recklessness or negligence, lack of skill in his or her trade or profession, or failure to observe the regulations or duties of his or her position, causes an injury to the body or health of another, will be punished with imprisonment of one month to three years or a fine of ARS1,000 to ARS15,000 and special disqualification from one to four years (*section 94, Criminal Code*).

The minimum punishment will be imprisonment of six months or a fine of ARS3,000 and special disqualification for 18 months where the:

- Injury causes permanent damage to the victim's speech, health, or to any sense, organ, or limb.
- Life of the victim is placed in jeopardy.
- Victim is made incapable of engaging in his or her work for more than one month.
- Injury causes permanent deformation to the victim's face.
- Injury results in a mental or physical disease which is certainly or probably incurable, or causes permanent incapacity to work, loss of a sense, organ or a limb, the use of an organ or to speech, or causes incapacity to procreate.

Section 41 of the Argentine Criminal Code sets out how the courts must calculate a sentence (*see Question 6*).

Labour law

From a labour law standpoint, the Health and Safety at Work Act regulates the overall conditions of safety and hygiene that employers must comply with. Work-related illnesses or accidents are regulated by Law 24,557. Breaches of health and safety laws will be subject to the following sanctions:

- Minor offence: warning for the first minor breach, following evaluation from the Ministry of Labour, or a fine ranging from 25% to 150% of the minimum wage in force at the time of the inspection. The law refers to the minimum wage but does not state (as it does in the other cases) that it is per affected employee. Currently the minimum wage amounts to ARS10,000.
- Serious breach: fine ranging from 30% to 200% of the minimum wage in force at the time of the inspection and per each affected employee.

- Very serious breach: fine ranging from 50% to 2,000% of the minimum age in force at the time of the inspection and per each affected employee.

Persistent offenders will be subject to additional fines and could also result in the legal entity being forcefully closed.

Safeguards

14. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

See [Question 7](#) and [Question 11](#).

Environmental offences

Regulatory provisions and authorities

15. What are the main regulatory provisions and authorities responsible for investigating environmental offences?

The legal framework for damage to the environment is established by the Environmental Law (Law No 24,051).

The federal criminal courts are the competent authorities for investigating environmental offences.

The national authority responsible for investigating environmental offences is the Ministry for the Environment and Sustainable Development (*Ministerio de Ambiente y Desarrollo Sustentable*, mayds). At the provincial level, the 23 Argentine provinces have their own environmental agencies, mainly at the ministerial or secretariat level. The city of Buenos Aires also created its own environmental protection agency in January 2008. In the province of Buenos Aires, the Provincial Sustainable Development Agency and the Water Authority play a very important role in environmental regulation and permitting.

In addition, to modernise its structure for combating complex crimes, the Prosecutor's Office for Environmental Offences (*Unidad Fiscal para la Investigación de Delitos Contra el Medio Ambiente*) created some diverse functional units. One such unit, the Unit for the Investigation of Environmental Crime (UIEC) was created in 2006 by the Agreement of Co-operation between the Public Ministry and the Secretary of Environment and Sustainable

Development. The UIEC is tasked with carrying out preliminary investigations and supporting investigations related to environment offences, breaches of conservation rules and other related crimes.

There are no specific regulations or guidelines for conducting investigations into breaches of the Environmental Law. Therefore, the common standards set out in the Criminal Procedural Code will apply.

Offences

16. What are the specific offences relating to the environment?

The Environmental Law punishes any person (individuals and not legal entities) that commits environmental crimes (for example jeopardising human health, or poisoning, polluting or contaminating soil, water, the atmosphere or the environment with hazardous waste).

Section 55 of the Environmental Law establishes that any person who poisons, pollutes or contaminates soil, water, the atmosphere or the environment with hazardous waste will be punished with imprisonment of three to ten years. If the act results in the death of any person, the punishment will be imprisonment of ten to twenty-five years.

Section 56 of the Environmental Law provides that if any of the acts set out in section 55 were committed by imprudence, negligence, or lack of skill on the trade or profession, or by his non-compliance with any bye-laws or regulations, imprisonment of one month to two years will be imposed. If it results in an illness or death of any person, the punishment will be imprisonment of six months to three years.

Finally, section 57 of the Environmental law provides that if any of the facts mentioned in the previous sections were committed by the decision of a company, the punishment will be applied to the directors, managers, statutory auditors, members of the shareholders' supervisory committee, receivers, legal representatives or authorised agents who participated in the punishable facts.

Defences

17. What defences or exemptions are available and who can qualify?

There are no defences or exemptions.

Enforcement

18. Which authorities have the powers of prosecution, investigation and enforcement in cases of environmental offences? What are the authorities powers of prosecution, investigation and enforcement, and what are the consequences of non-compliance?

Prosecution authorities

The federal criminal courts are the competent authority to prosecute and investigate environmental offences.

The authority of a federal judge is limited geographically to Argentina. The authorities and judiciary co-operate in practice with overseas regulators.

Prosecution powers

The federal criminal courts have broad powers under the Criminal Procedure Code, including the power to:

- Request reports from public and private agencies, to which they must comply under criminal penalty for disobedience.
- Order numerous procedural and precautionary measures aimed at avoiding and preventing obstruction to investigations and the escape of criminals. These include:
 - lifting the secrecy order. Usually when information is requested from financial entities it is necessary that the judge first raise the bank secrecy that is contractually agreed between the banks and their customers. This does not mean disclosure of information concerning the suspects;
 - detaining the accused;
 - prohibiting an individual from leaving the country;
 - seizing and freezing assets;
 - issuing search warrants;
 - confiscating assets.

All national and provincial police forces are at the federal judiciary's disposal as court assistants to perform, execute and/or comply with its orders.

Powers of interview

Under the Criminal Procedure Code, both judges and prosecutors have the power to conduct interviews. Nevertheless, police forces can perform or execute witness interviews by the order of the authorities. Accused people statements can only be performed by the judge.

Powers of search/to compel disclosure

See [Question 18](#). As court assistants, all national or provincial police forces must carry out this on the court's behalf.

However, judges or prosecutors usually entrust these tasks to the divisions of the police that specialise in environmental crimes.

Powers to obtain evidence

See [Question 18](#). Courts have broad powers to obtain evidence.

In this regard, all national or provincial police forces must assist courts with this task. However, judges or prosecutors usually entrust these tasks to the divisions of the police that specialise in environmental crimes (for example, it is very common for courts to order the police to carry out "extensive intelligence and operations tasks").

Power of arrest

See [Question 18](#). As court assistants, all national or provincial police forces must carry this out on the court's behalf.

Court orders or injunctions

See [Question 18](#). As court assistants, all national or provincial police forces must carry this out on the court's behalf.

Prosecution authorities

19. Which authority makes the decision to charge and on what basis is that decision made? Are there any alternative methods of disposal and what are the conditions of such disposal?

See [Question 5](#).

Conviction and sanctions

20. What are the penalties for environmental offences?

Federal Law No 25,675 of November 2002 on general environmental protection standards for the adequate and sustainable management of the environment (*Ley General del Ambiente*) (Environmental Framework Law) defines environmental damage as the collective impact of significant alteration that detrimentally changes the environment, its resources, the ecosystems balance or collective property or values.

Under the Environmental Framework Law, anyone that causes environmental damage will be strictly liable for restoring to the environment's former state. If this is not feasible, a substitutive compensation (as assessed by the ordinary courts of law) will be deposited in an environmental compensation fund, irrespective of other legal actions that may be applicable. According to section 34 Environmental Framework Law, the environmental fund will be managed by the competent authority for each province or jurisdiction and is designed to ensure:

- Environmental quality.
- The prevention and mitigation of noxious or dangerous effects on the environment.
- The handling of environmentally-related emergency situations.
- The protection, preservation, conservation or compensation of the ecological systems and the environment.

The authorities can determine that the fund be used to bear the costs of restoration actions to minimise the damage caused.

The penalties for the offences mentioned in [Question 16](#) are imprisonment of three to ten years and a fine of ARS10,000 to ARS200,000. If the act results in the death of any person, the punishment is imprisonment of ten to twenty five years.

These penalties should be imposed on directors, managers, statutory auditors, or members of the shareholders' supervisory committee of any company, who would have participated in the punishable act.

If the violation was due to recklessness, negligence, lack of skill in their trade or profession, or by failure to observe the regulations or duties of his position, the penalty will be imprisonment of one month to two years. In such case, if the act results in the death of any person the penalty will be imprisonment of six months to three years.

For details of how sentences are calculated, see [Question 6](#).

Safeguards

21. Are there any measures in place to safeguard the conduct of investigations? Is there a process of appeal? Is there a process of judicial review?

See [Question 7](#).

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Areas of practice. White collar crime; corporate crime.

Professional associations/memberships

- Regularly participates and speaks at conferences on transnational crime and anti-corruption of the IBA, Latin Lawyer and specialised fora in Argentina.
- Appointed as Chief of Cabinet of the Secretary of Judicial Investigations of the Ministry of Justice of Buenos Aires Province (1999-2001).
- Member of the Colegio Público de Abogados de la Capital Federal (Buenos Aires Bar Association), the Colegio de Abogados de San Isidro, the Criminal Federal Chamber of San Martin (with nationwide jurisdiction in federal matters).
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