

# Financial crime in Argentina: overview

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A Q&A guide to financial and business crime law in Argentina.

The Q&A gives a high level overview of matters relating to corporate fraud, bribery and corruption, insider dealing and market abuse, money laundering and terrorist financing, financial record keeping, due diligence, corporate liability, immunity and leniency, and whistleblowing.

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

This Q&A is part of the global guide to financial and business crime law. For a full list of jurisdictional Q&As visit [global.practicallaw.com/financialcrime-guide](https://global.practicallaw.com/financialcrime-guide).

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## Fraud

### Regulatory provisions and authorities

1. What are the main regulatory provisions and legislation relevant to corporate fraud?

### Criminal provisions

The main law governing and punishing perpetrators of crimes related to corporate fraud is the Criminal Code of Argentina (Criminal Code), which applies to the entire country. The Criminal Code sets out the various crimes that carry considerable penalties for those who violate its provisions. Over the past three decades, various additional laws have also been enacted due to the emergence of "white collar" crimes and commitments assumed by Argentina under several international treaties.

### Civil liability

Corporate or business fraud can also give rise to civil liability. Civil liability (unlike criminal liability) requires damage to a certain person to occur, and only that person (or their agent or successor) can bring a claim. Mere attempts are not punishable.

Liability in this area can arise under tort, through the fundamental principle of *alterum non laedere* (not to injure other) which precludes individuals from causing harm to others. This principle is set out in section 19 of the Constitution and is expressly codified in sections 1749 to 1759 of the Civil and Commercial Code (among others).

For corporate or business fraud to give rise to civil liability, all of the following elements must be present:

- A breach of either a legal or contractual obligation, constituting an illicit act.
- The existence of actual damage.
- A sufficient causal relationship between the illicit act and the damage.
- Negligence or wilful misconduct from the damaging party.

There are also some specific legal rules concerning fraud:

- **Fraudulent misrepresentation (section 271, Civil and Commercial Code).** The following are deemed to be fraudulent misrepresentation, and may give rise to civil liability if the other elements are present:
  - an untrue assertion or concealment of the truth; or
  - an artifice, cunning act or contrivance directed to such ends.
- **Duty of directors or managers to act with loyalty and with the diligence of a good businessman (section 59, Business Associations Law).** Failure to comply with this duty can give rise to unlimited joint and several liabilities for the damages caused to the company, the shareholders and other third parties (among others, any creditors), by their actions or omissions.
- **Rights of unsecured creditors to revoke acts carried out by the debtor to the detriment of (or in fraud of) their rights, where an act of corporate or business fraud results in insolvency proceeding (section 338, Civil and Commercial Code).** For this remedy to proceed, all of the following are necessary:
  - the debtor must be in a situation of insolvency (interruption of payments);
  - the damage caused to the creditor must have resulted from the act of the debtor, or due to the situation of insolvency prior to that;
  - the debt must have existed before the debtor's actions.

## Offences



2. What are the specific offences relevant to corporate fraud?

The following specific offences are relevant to corporate fraud:

- Frauds and scams (*Articles 172 to 174, Criminal Code*).
- Extortion or blackmail (*Articles 168 and 169, Criminal Code*).
- Fraudulent and negligent bankruptcy (*Articles 176 and 177, Criminal Code*).
- Fraudulent insolvency (*Article 179, Criminal Code*).
- Collusion with creditors (*Article 180, Criminal Code*).
- False balance sheets (*Articles 300 and 304, Criminal Code*).
- Manipulation of financial markets and misleading offer (*Article 309, Criminal Code*).
- Crime of financial intermediation (*Article 310, Criminal Code*).
- Smuggling (*Customs Criminal Law (Law No 22,415)*).
- Environmental crimes (such as poisoning or pollution that in any way causes dangerous to health) (*Law No 24,051*).
- Copyright and trademark offences (*Criminal Trademark Law (Law No 11,723 and Law No 22,362)*).
- Offences against the exchange regime (*Foreign Exchange Criminal Law (Law No 19,359)*).
- Tax evasion (*Criminal Tax Law (Law No 27,430)*).

In all cases above except negligent bankruptcy and some specific environmental crimes, the perpetrator's wilful misconduct is required, which at a minimum requires that the perpetrator had the ability or possibility of committing the offence presented and that he or she was indifferent in doing so.

In Argentina, except for some specific offences whereby companies can be personally liable (for example, corruption crimes, tax crimes, smuggling, among others), the general principle is that only individuals can be criminally liable. Legal entities generally can only be subject to ancillary or additional sanctions.

## Enforcement

3. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate or business fraud? What are these powers and what are the consequences of non-compliance? Please identify any differences between criminal and regulatory investigations.

## Authorities

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

There are also various government agencies that have supervisory responsibilities and seek to prevent the commission of corporate or business fraud. The following are the main government agencies:

- Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos*) (AFIP).
- Financial Information Unit (*Unidad de Información Financiera*) (FIU).
- Central Bank of the Republic of Argentina (*Banco Central de la República Argentina*) (BCRA).
- General Inspectorate of Justice (*Inspección General de Justicia*) (PRC).
- National Securities and Exchange Commission (*Comisión Nacional de Valores*) (CNV).
- Various offices and agencies of the National Judicial Power and the public prosecutor. Within the office of the public prosecutor, there is a specific prosecution department that specialises in corporate crime called the Office of the Prosecutor for Economic Crime and Money Laundering (*Procuraduría de Criminalidad Económica y Lavado de Activos*) (PROCELAC).

## 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, including the following:
  - 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 local police forces are at the disposal of the national judiciary, as court assistants, to perform, execute and/or comply with its orders.

## **Powers of interview**

As court assistants, all national or local police forces must carry out this on the courts' behalf (*see above, Prosecution powers*).

## **Powers of search/to compel disclosure**

As court assistants, all national or local police forces must carry out this on the courts' behalf (*see above, Prosecution powers*). Courts have broad powers to obtain evidence. In that regard, the authorities and agencies referred above must assist courts with said task (for example, it is very common for courts to order to the police to carry out "extensive intelligence and operations tasks").

## **Powers to obtain evidence**

As court assistants, all national or local police forces must carry out this on the courts' behalf (*see above, Prosecution powers*).

## **Power of arrest**

As court assistants, all national or local police forces must carry out this on the courts' behalf (*see above, Prosecution powers*).

## **Court orders or injunctions**

The following measures must be ordered by a judge:

- All measures that interfere with fundamental rights, such as inviolability of the home or correspondence, including authorisations to intercept mail or issue search warrants.
- Arrests in certain cases.
- Orders to directly control the company's management to avoid the commission of corporate fraud. While this power is rare in a criminal court, the General Inspectorate of Justice (PRC) has commonly ordered interventions in civil and commercial cases.

Although generally the authority of a judge is limited to a geographical area, the judge can apply the above measures outside their jurisdiction within Argentina. There are numerous cases in which local authorities grant various precautionary measures in cases of corporate fraud at the request of foreign judges.

Failure to comply with an order issued by the investigating authorities gives rise to penalties such as the charge of criminal contempt of authority (*Article 239, Criminal Code*). There is no justification for not responding to a request for information, except for justifications arising from general rules of confidentiality in cases where there is professional secrecy (this applies for lawyers and notaries).

4. 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 resolution called "*suspensión de juicio a prueba*" (similar to the probation process in US) which requires the defendant to compensate the victim for the damage and to execute certain public activities in accordance with an agreement with the prosecutor for a certain period of time. Once complied with, the criminal case should be dismissed.

5. What are the sanctions for participating in corporate fraud?

### **Civil/administrative proceedings or sanctions**

Argentine law does not impose special civil or administrative procedures for cases of civil fraud. However, the administrative authorities (in their field of competence) can impose sanctions against the company that committed the acts, for example:

- The Federal Tax Agency or local tax authorities can impose fines if the fraud relates to tax evasion.
- The National Securities and Exchange Commission can ban the company's participation in the stock market where the fraud relates to the public sale of shares.

- The National Commission for Anti-trust (Anti-trust Commission) can impose fines and make the company cease the anti-competitive activities if the fraud relates to market or competition abuse.

## Criminal proceedings

**Right to bail.** When a suspect is detained, he or she has the right to request his release. Depending on the risks of the process the judge may or may not grant him freedom. If this happens, in most of cases the accused must pay a bail bond with the promise to appear in court when required. Bail amounts may vary depending on the type and severity of crime the suspect is accused of. In minor cases, the promise of the accused is sufficient.

**Penalties.** Each of the criminal acts mentioned in [Question 2](#) carry specific penalties, which are split into the following groups:

- **Fines (of up to ten times the value of the offence).** This applies to cases of market manipulation and misleading offers or financial intermediation; foreign exchange offences; smuggling; tax evasion and environmental crimes.
- **Disqualification from professional practice or removal of licence.** This applies to cases of fraudulent and negligent bankruptcy.
- **Imprisonment.** This applies to cases of:
  - fraudulent and negligent bankruptcy;
  - fraudulent insolvency;
  - collusion with creditors;
  - false balance sheets;
  - manipulation of financial markets and misleading offer;
  - crime of financial intermediation.
  - foreign exchange offences;
  - smuggling;
  - environmental offences;
  - copyright and trade mark offences; and
  - tax evasion.

The most severe punishments are for offences such as aggravated evasion (up to nine years) and breach of environmental law (up to 25 years if the acts result in the death of any person).

## Civil suits

Damages are the ordinary remedy available for liability in tort.

Class actions are only possible in certain limited cases, such as consumer claims. These are cases where a consumer protection association (among other possible claimants) files a claim on behalf of an indefinite number of unidentified individual consumers under certain conditions. Class actions generally do not apply to cases of corporate or business fraud.

However, such claims may be initiated following an investigation and conviction by the Antitrust Authority for anti-competitive conduct. Similarly, punitive damages are only applicable in cases involving consumer or user's rights (*section 52, Consumer Defence Act*).

## Safeguards

6. 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?

In criminal proceedings, the judge can opt to keep the investigation secret, without allowing the parties to know the tasks that are being carried out. However, this is an exceptional measure, reserved for cases where there is a risk of escape and/or obstruction of the investigation.

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

## Bribery and corruption

### Regulatory provisions and authorities

7. What are the main regulatory provisions and legislation relevant to bribery and corruption?

The Criminal Code is the main law that governs and punishes behaviour related to bribery and corruption. In addition, the Constitution provides a special mechanism for the removal and prosecution of public officials and judges (impeachment).

8. What international anti-corruption conventions apply in your jurisdiction?

The UN Convention against Corruption 2003 (Corruption Convention) has constitutional status and is in force in Argentina (*Article 75, section 2, Constitution*). The Corruption Convention was ratified in June 2006 and was transposed into national law by Law No 26,097. As a result, Argentina has taken on the obligation to make coordinated and effective policies relating to anti-corruption that:

- Promote participation in society.
- Reflect the principles of the:
  - rule of law;
  - proper management of public affairs and public property; and
  - integrity, transparency and the obligation to render account.

(*Article 5, sections 1 and 3, Constitution.*)

Argentina must also evaluate its relevant legal instruments and administrative measures to determine whether they are adequate to combat corruption.

Argentina acceded to the Inter-American Convention against Corruption of 1996 through Law No 24,759. This treaty:

- Promotes and strengthens the development, by each of the state parties, of the mechanisms needed to prevent, detect, punish and eradicate corruption.
- Facilitates and regulates co-operation among the acceding countries to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate acts of corruption in the performance of public functions, and specifically related to that performance.

Argentina also acceded to the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) in 2000 (approved by Law No 25,319). This treaty establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions.

## Offences

9. What are the specific bribery and corruption offences in your jurisdiction?

## Foreign public officials

Section 258 bis of the Criminal Code provides that the punishment of imprisonment of one to six years and special disqualification for life from the exercise of any public office applies to any person who offers or gives a public official from a foreign state or from an international public organisation, personally or through an intermediary, money or any object of pecuniary value or other benefits such as gifts, favours, promises or benefits, for:

- That person's own benefit or for the benefit of a third party.
- The purpose of having that official undertake or not undertake an act related to his or her office or to use the influence derived from the office he or she holds in an economic, financial or commercial transaction.

## Domestic public officials

The Criminal Code is the main law that governs and punishes domestic bribery and corruption:

Any public official who, personally or through an intermediary, receives money or any other gift, or directly or indirectly accepts the promise of these, to carry out, delay or not do something in relation to his or her duties, will be punished with imprisonment of one to six years and disqualification for life (*section 256, Criminal Code*).

Any public official who, personally or through an intermediary, requests or receives money or any other gift, or directly or indirectly accepts the promise of these, in order to make unlawful use of his or her influence before a public official, with the purpose of having the official do, delay or not do something in relation to his or her duties, shall be punished with imprisonment of one to six years and special disqualification from holding public office for life (*paragraph 1, section 256 bis, Criminal Code*).

Paragraph 2 of section 256 bis also provides that if this conduct is intended to make unlawful use of any influence before a magistrate of the judiciary or the State Attorney's Office, with the purpose of having the magistrate issue, decree, delay or omit any resolution, sentence or judgment concerning any matter under his or her jurisdiction, the maximum prison sentence shall be increased to 12 years.

Any person who personally or through a third person gives or offers any gift for the purpose of soliciting the crimes punished by paragraph 1 of sections 256 and 256 bis shall be punished with imprisonment of one to six years. If the gift is given or offered with the purpose of soliciting the conduct described in paragraph 2 of section 256 bis and section 257, the punishment shall be imprisonment of two to six years. If the perpetrator is a public official, special disqualification of two to six years shall also be imposed in the first case, and from three to ten years in the second case (*section 258, Criminal Code*).

Any magistrate from the judiciary or the State Attorney's Office who personally or through an intermediary, receives money or any other gift, or directly or indirectly accepts the promise of these, in order to issue, decree, delay or omit any resolution, sentence or judgment concerning any matters under his or her jurisdiction. In such a case, the defendant shall be punished with imprisonment of four to 12 years and disqualification for life (*section 257, Criminal Code*).

Additionally, a fine of up to ARS90,000 Argentine can be imposed where an offence is committed 'with the aim of monetary gain' (*section 22 bis, Criminal Code*).

In bribery and corruption cases, the perpetrator must show specific intent to commit wrongdoing, but damage is not necessary. However, it may be difficult to prove attempt in such a case, as the crime is generally carried out through accepting the promises or receiving the gift.

### **Private commercial bribery**

Currently, the offence of bribery does not apply to bribery between private individuals, but only where government officials and employees are involved. The exception to this concerns the offence of bribery for employees or officials of financial institutions (*Article 312, Criminal Code*). This provides that employees of financial institutions and entities operating in a stock exchange will commit an offence if they personally, or through an intermediary, receive money or any other benefit as a condition to provide loans, finances or stock exchange transactions.

### **Defences**

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

There are no safe harbours or exemptions. Facilitation or "grease" payments (for routine government actions) are not allowed.

11. Can associated persons (such as spouses) and agents be liable for these offences and in what circumstances?

Associated persons are not considered principal offenders. However, it is possible to punish such persons as accomplices if they facilitate the commission of the crime, in which case they will be subject to the same penalties as the main perpetrator.

### **Enforcement**

12. Which authorities have the powers of prosecution, investigation and enforcement in cases of bribery and corruption? What are these powers and what are the consequences of non-compliance? Please identify any differences between criminal and regulatory investigations.

## Authorities

The various Argentine federal criminal courts are the competent courts to hear bribery cases and matters concerning corruption of public officials. These courts are also responsible for conducting investigations or search, which can be delegated to the prosecutor. Also, all national and local police forces are at the federal judiciary's disposal as court assistants to perform, execute and/or comply with its orders.

## Prosecution powers

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

- Request reports from public and private agencies.
- 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 for the judge to 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; and
  - confiscating assets.

All national and local police forces are at the disposition of the federal courts, as court assistants, to perform, execute and/or comply with its orders. Therefore, the police are authorised to conduct searches or obtain evidence on the courts' behalf

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

The only protection provided is that some people may be required to answer written reports so as not to testify as witnesses. This applies to the President, Vice President, provincial governors, Mayor of the City of Buenos Aires, national and provincial Ministers and legislators, members of the judiciary and provinces, Diplomatic Ministers and General Consuls, and senior officers of the armed forces (*Article 250, Criminal Procedure Code*).

## Powers of interview

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

### **Powers of search/to compel disclosure**

Under the Criminal Procedure Code, the national and provision police forces are empowered conduct searches or compel disclosure by order of the federal courts.

### **Powers to obtain evidence**

Under the Criminal Procedure Code, the national and local police forces are empowered to request reports from public and private agencies by order of the federal courts.

### **Power of arrest**

Under the Code of Criminal Procedure, both national and local police forces are empowered to make arrests by order of the federal courts.

### **Court orders or injunctions**

See above, *Prosecution powers*.

13. 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 4*.

### **Convictions and sanctions**

14. What are the sanctions for participating in bribery and corruption?

### **Civil/administrative proceedings or penalties**

Argentine law does not impose special civil or administrative procedures for cases of bribery and corruption. However, some administrative sanctions (other than fines or penalties) may be applicable. For example, if it is proved that a contracting process involved bribery or corruption then, among others:

- Those contracts can be declared null and void.
- The company could be removed from the state registry of suppliers and contractors.

## Criminal proceedings or penalties

**Right to bail.** See [Question 5, \*Criminal proceedings: Right to bail\*](#).

**Penalties.** The following penalties apply:

- For the public officer who receives the gift or promise to perform, delay or stop performing something related to his or her duties: imprisonment from one to six years and perpetual special disqualification from public office (*Article 256, Criminal Code*). The punishment only applies to individuals (not legal entities).
- For the individual who directly or indirectly gives or offers gifts in an attempt to cause a public officer to perform, delay or stop performing something related to his or her duties: imprisonment from one to six years (*Article 258, Criminal Code*). If the offender is a public officer, he or she will be disqualified from public office for two to six years.

Finally, according to Law No 27,401 legal entities are criminally liable for corruption crimes "that have been carried out, directly or indirectly, with their intervention or in their name, interest or benefit".

See also [Question 9](#).

## Safeguards

15. 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 6](#).

## Tax treatment

16. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

The Income Tax Law does not explicitly prohibit the deductibility of bribes, ransoms or other payments arising from blackmail or extortion. However, it does specifically state that net losses arising from illegal operations are non-deductible (*Article 88(j), Income Tax Law*). In addition, the government has stated before the OECD Working Group on Bribery in International Business Transactions that the deductibility of bribes is implicitly prohibited by Argentine tax law (*Follow-Up Report on the Implementation of the Phase 2 Recommendations, 3 September 2010*).

There may be circumstances in which payments are deductible where the taxpayer was the victim of a crime. The Supreme Court of Argentina (CSJN) has held that a ransom paid for the kidnapping of a director is deductible as an extraordinary loss provided it has been duly proved. To deduct a ransom like this, the following conditions must be applicable:

- The kidnapping must be proved before the judiciary or police authorities.
- The victim must be considered essential for the development of the company, considering his or her activity or personal characteristics.
- The payment of the ransom amount must be made by the company.
- This payment must be duly proved.

Deduction of expenditure is not allowed if it is not supported by any documentation and it cannot be proved by other means that it was incurred to obtain or keep taxable information (this expenditure will also be subject to 35% tax). AFIP challenges the deduction of payments that are not documented and clearly linked to the generation of taxable income. In such cases, the taxpayer must prove the existence of the expenditure and that it was genuinely incurred to obtain or keep taxable income.

## **Insider dealing and market abuse**

### **Regulatory provisions and authorities**

17. What are the main regulatory provisions and legislation relevant to insider dealing and market abuse?

Market abuse operations are regulated by the National Anti-trust Law No 27,442 (Anti-trust Law).

Until the new Anti-trust Authority is designated, breaches of competition or anti-trust matters are investigated by the Anti-trust Commission and its decisions are reviewed by the Court of Appeals of the Federal Civil and Commercial Court.

The supply of inside information is prohibited (*Article 307, Criminal Code*).

There is also a basic offence of breach of secrecy (*Article 156, Criminal Code*).

In September 2018, the Anti-trust Commission released draft guidelines for the analysis of cases of abuse of dominance in market abuse. However, a final document has not yet been released to date.

## Offences

18. What are the specific offences that can be used to prosecute insider dealing and market abuse?

Argentine law prohibits the following offences:

- **Insider dealing (*Article 307, Criminal Code*)**. This applies to whoever by his or her employment, profession or function within a securities' issuer, directly or through a third party, supplies or uses inside information to which he or she had access during his or her activity, for the negotiation, quotation, purchase, sale, or liquidation of securities.
- **Market abuse (*National Anti-trust Law No 27,442; Article 156, Criminal Code*)**. This applies to acts that in any way:
  - have the purpose or effect of limiting, restricting, faking or distorting competition or market access; or
  - constitute abuse of a dominant position in a market, so as to harm the general economic interest.

Such acts can include, for example:

- directly or indirectly manipulating the sale or purchase price of assets or services offered in the market;
- establishing obligations to market only a restricted or limited amount of assets, or providing a restricted or limited number of services; and
- horizontally dividing areas, markets, customers and sources of supply.

For both offences it is necessary to prove a specific intent of wrongdoing. It is not necessary to prove damage. Attempts are punishable.

## Defences

19. What defences, safe harbours or exemptions are available and who can qualify?

Any person or company involved in any anti-competitive agreement prohibited by the Anti-trust Law can request eligibility for a leniency programme. To be fully exempt from fines, the party applying for leniency must:

- Submit evidence that allows the Anti-trust Authority to prove the existence of anti-competitive conduct. The Anti-trust Authority is composed by the Anti-trust Commission and the Anti-trust Tribunal. The Tribunal, that has not been elected yet, has the administrative judgment powers while the Anti-trust Commission has the investigation or prosecution powers. In practice, until Tribunal is elected and the new Anti-trust Authority is in office, Competition Commission will continue to carrying out investigations and the Secretariat of Commerce will issue the judging resolutions.
- Submit such evidence before an investigation has been initiated or when the authorities do not have enough evidence of the conduct.
- Be the first involved in the conduct that requests for leniency and submits such evidence.
- Ceases and desists the conduct (unless instructed otherwise by the Competition Court for the sake of the investigation).
- Fully co-operate with the Competition Court throughout the investigation.
- Not destroy, forfeit or hide evidence of the conduct (nor have done it before).
- Not have publicly disclosed its intention to apply for leniency (unless it was to other competition authorities).

## Enforcement

20. Which authorities have the powers of prosecution, investigation and enforcement in cases of insider dealing and market abuse? What are these powers and what are the consequences of non-compliance? Please identify any differences between criminal and regulatory investigations.

## Authorities

The Argentine national criminal courts have the powers of prosecution, investigation and enforcement in cases of insider dealing and market abuse.

Also, in relation to market abuse, the Anti-trust Authority has broad investigative and sanctioning powers.

## Prosecution powers

**Market abuse.** In relation to market abuse, the Anti-trust Commission has full powers under the Anti-trust Law to:

- Perform studies and conduct investigations concerning market conditions. In this context, the Commission can request information and documents from individuals; national, provincial or municipal authorities, consumer associations and so on.
- Hold hearings with allegedly responsible parties, claimants or damaged parties, witnesses and experts.
- Request expert examinations on financial and corporate documents.
- Conduct inspections.
- Impose penalties.
- Prosecute legal actions and file petitions for judicial injunctions necessary to the enforcement of the Anti-trust Law.

In addition, the Anti-trust Authority may order the defendant to comply with pro-competitive conditions or to cease anti-competitive conduct (*section 44, Anti-trust Law*).

The Anti-trust Authority can start an investigation on its own initiative or as the result of a complaint of a private party. The Authority will provide the defendant with ten days to respond to the allegations. After receiving the response, the Authority must decide to either open the investigation or dismiss the claim.

Where an investigation is opened, the defendant will be given 15 days to file a defence and offer evidence. The defendant may also offer a commitment to stop the practice under analysis (before the final resolution has been issued), and the Authority can decide whether to accept such commitment.

Once the evidentiary stage is concluded, the Commission can impose a penalty. Penalties imposed by the Commission can be appealed.

The Argentine courts and/or Anti-trust Authority do not have powers of extra-territorial jurisdiction.

**Insider dealing.** The crime of insider dealing is incorporated into the general system of offences under the Criminal Code. Therefore, insider dealing offences follow the usual rules for investigation and punishment, including the general rules of the Criminal Procedure Code (*see Question 3*).

## Powers of interview

**Market abuse.** See above, *Prosecution powers: Market abuse*.

**Insider dealing.** See above, *Prosecution powers: Insider dealing*.

## **Powers of search/to compel disclosure**

**Market abuse.** See above, *Prosecution powers: Market abuse*.

**Insider dealing.** See above, *Prosecution powers: Insider dealing*.

## **Powers to obtain evidence**

**Market abuse.** See above, *Prosecution powers: Market abuse*.

**Insider dealing.** See above, *Prosecution powers: Insider dealing*.

## **Power of arrest**

The Anti-trust Commission and the Anti-trust Authority do not have any powers arrest for market abuse. The Anti-trust Law does also not include any criminal charges for market abuse.

## **Court orders or injunctions**

The Anti-trust Commission and Anti-trust Authority in general can issue orders and impose fines in case that they are not followed. In addition, the Anti-trust Authority or the Commission itself may request an injunction to a judge.

21. 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 4*.

## **Convictions and sanctions**

22. What are the sanctions for participating in insider trading and market abuse?

## **Civil/administrative proceedings or penalties**

In cases of market abuse, the Anti-trust Authority can:

- Impose an order to immediately end acts or behaviours of offending conduct and, if necessary, remove their results.
- Impose a fine up to 30% of the income generated by the business that infringed the law (multiplied by the number of years of infringement), but limited to 30% of the total income of the economic group in Argentina during the last fiscal year or double the amount of the benefits generated by the infringement. If none of these calculations can be performed, the maximum fine will amount to 200 million units (about USD160 million as at June 2018) for infractions to the Anti-trust Law. In the case of re-offending, the amount of fine will be doubled. The value of "units" vary from year to year: for 2018 one unit is set at ARS20.
- Impose a fine up to 0.1% of the total income of the economic group in Argentina during the last fiscal year or in case that it could not be calculated up to 750,000 units (about USD600,000) on parties who do not comply with orders of the Anti-trust Commission, in addition to any other sanctions that may apply.
- Impose a fine up to 500 units (about USD400) daily on those who obstruct the investigation or who do not respond to requests from the Anti-trust Commission.
- In the event of an abuse of dominant position, request the court to issue an order to divest assets or dissolve the company.

## Criminal proceedings

**Right to bail.** See *Question 5, Criminal proceedings: Right to bail*.

**Penalties.** In cases of insider trading, the court can impose the following penalties:

- Imprisonment of one to four years.
- Fine equivalent to the amount of the prohibited operation. This specific penalty is for cases in which privileged or unauthorised information was used to affect the price of the marketable securities.
- Disqualification from a regulated financial activity of up to five years.

## Civil suits

Not applicable.

## Safeguards

23. 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 6](#).

## Money laundering, terrorist financing and financial/trade sanctions

### Regulatory provisions and authorities

24. What is the main legislation and regulatory provisions relevant to money laundering, terrorist financing and/or breach of financial/trade sanctions?

### Money laundering

Following the recommendations of the Financial Action Task Force (FATF) in June 2011, Argentina enacted Law No 26,683 to combat the crimes of money laundering and terrorist financing (among others). Law No 26,683 introduced a special title in the Criminal Code for crimes against the economic and financial order.

The Financial Information Unit (FIU) is an agency that operates under the government. It is responsible for analysing and transmitting the information of entities for the purposes of preventing and disrupting money laundering. It operates under Law No 25,246, which establish the FIU, its operation, investigatory powers, and penalties for non-compliance. The FIU has its own regulations for its preliminary investigations.

The first instance courts (or federal courts, depending on the specific transaction and the people who participate in it) are responsible for investigating and prosecuting the relevant offences. For such cases, the Criminal Code provides the procedure for the judge to follow from the start of proceedings (*Article 305*).

### Terrorist financing

See above, [Money Laundering](#).

### Financial/trade sanctions

There are no specific regulations concerning breaches of financial or trade sanctions on dealing with certain jurisdictions.

However, the Hydrocarbons Law (Law No 26,659) imposes criminal sanctions on anyone who engages in the search and extraction of hydrocarbons without authorisation of the competent authority, through exploration in the territorial sea or in Argentina's continental shelf or reserves. This prohibition is understood to apply to the Islas Malvinas or Falkland Islands (British sovereignty). The Secretary of Energy is the regulatory authority in this area, and the federal courts have jurisdiction over any case.

### Offences

25. What are the specific offences that can be used to prosecute money laundering, terrorist financing and breach of financial/trade sanctions?

## Money laundering

An individual commits the offence of money laundering if he or she converts, transfers, administers, sells, encumbers, conceals or otherwise puts into circulation in the market, assets derived from a criminal offence, with the possible consequence that the origin of the assets or their substitutes acquire the appearance of lawful origin (*Article 303 and so on, Criminal Code*). It is necessary to prove specific intent of wrongdoing.

Attempts are punishable on the basis that any person who receives money or other goods resulting from a crime, with the purpose of applying them in any other operation that may give them the appearance of being from a legitimate source.

## Terrorist financing

A person commits the offence of terrorist financing if he or she, directly or indirectly, collects or supplies assets or money with the intention or knowledge of them being used, in whole or in part, to finance terrorist activity (*Article 306, Criminal Code*). It is not necessary for the terrorist activity to have actually taken place.

## Financial/trade sanctions

See [Question 24, Financial/trade sanctions](#).

## Defences

26. What defences, safe harbours or exemptions are available and who can qualify?

## Money laundering

There is no safe harbour for money laundering. However, the Criminal Code provides that if the transaction is for less than ARS300,000 the penalty will be reduced to imprisonment ranging from six months to three years and the offence will be considered a misdemeanour. For details of sanctions, see [Question 29](#).

If penalties are imposed on a legal entity as an accessory (where the money laundering had been incurred for its benefit) the judge may take into account the entity's implementation and monitoring of compliance programmes as a mitigating (although not exonerating) factor (*Article 304, Criminal Code*).

Providing information about other perpetrators or related offences is not a mitigating or exonerating factor.

## **Terrorist financing**

If the terrorist offence that was financed had a penalty range that was lower than the penalty range for terrorist financing, the lower penalty range will be applied.

Providing information about other perpetrators or related offences is not a mitigating or exonerating factor.

## **Financial/trade sanctions**

There is no safe harbour under the Hydrocarbons Law.

## **Enforcement**

27. Which authorities have the powers of prosecution, investigation and enforcement in cases of money laundering? What are these powers and what are the consequences of non-compliance? Please identify any differences between criminal and regulatory investigations.

## **Authorities**

The first instance courts, federal courts, and the FIU are tasked with investigations into money laundering, terrorist financing and breaches of the Hydrocarbons Law.

In relation to money laundering, some public and private entities (such as banks and other financial entities) must report suspicious activity to the FIU. The FIU will then consider if the facts denounced could be a crime. The FIU will then file (or not) a criminal complaint before the federal judiciary. After the criminal complaint is filed, the FIU does not intervene any further in the investigation.

## **Prosecution powers**

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

In money laundering operations, the assets can be confiscated definitively without criminal conviction, when one of the following applies:

- Their unlawful origin or the crime to which they are attached is proved.
- The accused is unable to be prosecuted because of death, escape, expiration of prescription period or other grounds of suspension or termination of the criminal action.
- The accused has knowledge of the source or unlawful use of the assets.

Seized assets are used to repair the damage caused to society, victims or the government.

The Argentine courts have no jurisdiction outside the country, and they will depend on the co-operation of the courts of foreign jurisdictions to obtain valuable information for their own investigations. It is normal for Argentine courts to co-operate in the same way as for foreign prosecutions.

See also [Question 3](#).

## **Powers of interview**

Both the FIU (before the criminal complaint is filed) and the courts (after the criminal case is initiated) have broad powers to conduct their investigations, including the power to request reports from both public and private agencies, who must comply on penalty of committing the crime of disobedience. This penalty is imposed on both individuals and legal entities.

## **Powers of search/to compel disclosure**

See above, [Prosecution powers](#).

## **Powers to obtain evidence**

See above, [Prosecution powers](#).

## **Power of arrest**

See above [Prosecution powers](#).

## **Court orders or injunctions**

The procedure for the first instance or federal judge is set out in Article 305 of the Criminal Code, which provides that precautionary measures must be taken to ensure the safekeeping, administration, maintenance and disposition of assets that are the instruments, product, profit or result of crimes provided for in the other Articles of the Criminal Code. The federal judges have at their disposal numerous procedural and precautionary measures, aimed at avoiding and preventing investigations being obstructed and criminals helped to escape, for example:

- Secrecy order.
- Detention of the accused.
- Prohibition from leaving the country.
- Seizure and freezing of assets.

- Search warrants.
- Confiscation of assets.

28. 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 4](#).

## Convictions and sanctions

29. What are the sanctions for participating in money laundering, terrorist financing offences and/or for breaches of financial/trade sanctions?

## Money laundering

**Right to bail.** Not applicable.

**Penalties.** The penalties for money laundering are:

- Imprisonment of three to ten years.
- Fine of two to ten times the amount of the transaction.

Aggravated offences are punishable with imprisonment of 4.5 years to 13.3 years. Offences will be aggravated by the status of the perpetrator as a repeat offender, his or her criminal association, or status as a public officer.

When the offence is made on behalf of, with the assistance of, or for the benefit of a legal entity, the following penalties are imposed on the entity, either jointly or as an alternative:

- A fine of two to ten times the value of the assets that are the subject of the offence.
- Suspension of activities, either total or partial, for a maximum of ten years.
- Suspension from participating in government tenders or bidding processes for public services or works or any other activity related to the government (for not more than ten years).

- Cancellation of legal status when created for the sole purpose of committing the offence or when those acts constitute the main activity of the company.
- Loss or suspension of state benefits, if any.

## **Terrorist financing**

**Right to bail.** Not applicable.

**Penalties.** The penalties for terrorist financing are

- Imprisonment of five to 15 years.
- Fine from two to ten times the amount of the transaction.

The same penalty applies to legal entities as for money laundering (*see above, Money laundering*).

## **Financial/trade sanctions**

**Right to bail.** Not applicable.

**Penalties.** The penalties for breach of the Hydrocarbons Law are:

- Imprisonment of five to ten years.
- Fine equivalent to the market price of 20,000 to 100,000 barrels of crude oil (each one with capacity of 42 US gallons).

An aggravated offence (where hydrocarbons had effectively been extracted) is punishable with:

- Imprisonment of ten to 15 years.
- Fine equivalent to the market price of 150,000 to 1.5 million barrels of crude oil.

## **Safeguards**

30. 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 6](#).

## Financial record keeping

31. What are the general requirements for financial record keeping and disclosure?

Certain specific subjects (regulated entities) must inform and make available to the FIU:

- Documentation collected from their customers.
- The behaviour or activities of individuals or legal entities of an atypical situation which may suggest the existence of a suspicious act or transaction, money laundering or terrorist financing.

*(Article 21, Law 25,246.)*

If a regulated entity has knowledge of a suspicious act or transaction, it must bring this to the FIU's attention, within 150 days from the operation performed or attempted in cases of money laundering, and 48 hours in cases of terrorist financing (*Article 21bis, Law No 25,246*). Regulated entities must keep the information for five years (*Law No 25,246*).

In addition, the following documents must be kept by regulated entities:

- Books and other registries, until ten years after the last entry.
- Supporting documentation, until ten years after the date of their creation.

*(Article 328, Civil and Commercial Code).*

32. What are the penalties for failure to keep or disclose accurate financial records?

According to Law No 25,246, if a regulated entity fails to keep or disclose accurate financial records, it will be subject to a fine of one to ten times the total value of the assets or operations to which an offence is related is imposed on the:

- Person acting as a body or executor of a legal entity, or the individual who fails to comply with the reporting obligations before the FIU.
- Legal entity in which the offender works.

This is provided that the act does not constitute a more serious offence, such as money laundering.

When the real value of the assets cannot be established, the penalty will range from ARS10,000 to ARS100,000.

33. Are the financial record keeping rules used to prosecute white-collar crimes?

Law No 25,246, which established the FIU, provides that the information analysed must serve not only to prevent the crimes of money laundering and terrorist financing, but also the crimes related to:

- Drug trafficking and illegal sale.
- Arms smuggling and drug smuggling.
- The activities of an illegal association or a terrorist conspiracy.
- Crimes committed by illegal associations organised to commit crimes for political and racial purposes.
- Crimes of fraud against public administration.
- Crimes against public administration.
- Crimes related to child prostitution and child pornography.
- Extortion.
- Tax crimes.
- Human trafficking.

## Due diligence

34. What are the general due diligence requirements and procedures in relation to corruption, fraud or money laundering when contracting with external parties?

Due diligence requirements vary, but generally involve:

- The investigation of possible criminal actions in which the legal entity or any of its officers was involved, usually in investigations or acts of corruption before the federal courts, corporate fraud and/or tax frauds.

- A detailed analysis of the control mechanisms implemented by the company and its actual functionality, such as:
  - fraud detection systems;
  - internal complaints systems;
  - consistency and effectiveness in audits;
  - policy of understanding of the use of e-mail by employees; and
  - hiring policies.

If the company is a regulated entity, the regularity of the reports to the FIU and the existence of manuals and training courses to employees will be monitored.

## Corporate liability

35. Under what circumstances can a corporate body itself be subject to criminal liability?

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).

Legal entities can be criminally liable for these crimes when they have been carried out "directly or indirectly, with their intervention or in their name, interest or benefit". In some cases, legal entities may also be liable when anyone who acted for their benefit or interest is a third party who does not have powers to act on their behalf, provided that the legal entity ratified the management, even if it is tacitly.

In these cases, the penalties can include:

- Fines, in some cases up to ten times the value of the offence.
- Suspension of activities.
- Suspension of the ability to participate in public tenders.
- Cancellation of legal status.
- Loss or suspension of governmental benefits.

## Cartels

36. Are cartels prohibited in your jurisdiction? How are cartel offences defined? Under what circumstances can a corporate body be subject to criminal liability for cartel offences?

The Criminal Code prohibits cartel offences. Any person who causes the price of goods, bonds or securities to raise or drop by means of false news, fictitious negotiations or by connivance or coalition among the principal holders of any such good or product, with the purpose of selling it only for a fixed price will commit an offence (*section 300, Criminal Code*). Any such person will be subject to prison for six months to two years.

## Immunity and leniency

37. In what circumstances is it possible to obtain immunity/leniency for co-operation with the authorities?

There are no laws concerning obtaining immunity or leniency for co-operation with the authorities except in relation to whistle-blowers under the Narcotics Law (Law No 23,737) and for some specific corruption crimes (Law No 27,304). According to these laws, prosecutors are allowed to offer criminal suspects the opportunity to bargain for a shorter sentence in exchange for an admission of wrongdoing and provision of valuable information to further the prosecutors' investigations.

## Cross-border co-operation

38. What international agreements and legal instruments are available for local authorities?

## Obtaining evidence

Law No 24,767 (Cross-border Co-operation Law) has been in force since 1997. The law sets out the rules of procedure for international legal assistance and extradition received by Argentina. In addition, where there is no binding treaty between Argentina and the requesting government, the Cross-border Co-operation Law establishes the conditions under which the assistance will be awarded, which are, in general terms:

- The extradition process cannot be for a political crime.
- The extradition process cannot be for reasons exclusively envisaged by military criminal law.
- The motivation for the extradition must not be for persecutory purposes (for example, for reasons of political opinions, nationality, race, sex or religion).

Criminal assistance will be provided even if the offence that motivates the extradition process is not specifically provided for under Argentinean law.

In addition, several bilateral and regional international treaties have been entered into which provide rules for mutual assistance on criminal matters (such as for the purpose of obtaining evidence).

### **Seizing assets**

The Cross-border Co-operation Law does not establish a specific mechanism for the seizing of assets abroad. However, for these types of measures, which may affect rights protected by the Constitution (such as the right to property), the Cross-border Co-operation Law provides that the offence will need to be provided for specifically under the Argentinean law and the order must be issued by a judge, for matters such as:

- A house search.
- Surveillance of individuals.
- Interception of correspondence or communications.

The Corruption Convention was ratified by Argentina in June 2006 and was transposed into national law by Law No 26,097, which enables confiscation of proceeds of crime and property or other items used for offences under the Convention (*section 31*).

### **Sharing information**

The Cross-border Co-operation Law provides mechanisms for mutual criminal assistance.

39. In what circumstances will domestic criminal courts assert extra-territorial jurisdiction?

The Criminal Code establishes the principle of territoriality. Article 1 states that the Criminal Code will apply to:

- Crimes committed or consequences from crimes that occur in:
  - the territory of the Republic of Argentina; and

- areas subject to Argentina's jurisdiction.
- Crimes committed abroad by agents or employees of Argentinean authorities in performing their duties.

However, in relation to money laundering and terrorist financing under Articles 303 and 307 of the Criminal Code, the Code states that these specific provisions will apply extra-territorially if these crimes are committed outside the jurisdiction of Argentina.

40. Does your jurisdiction have any statutes aimed at blocking the assertion of foreign jurisdictions within your territory? Are there statutes aimed at blocking the assertion of foreign jurisdictions within their territory?

There are no rules restricting compliance with investigations started in other countries where those acts are not being investigated in Argentina.

Section 82 of Law No 24,767 (Extradition Law) provides for a "national option". This means that if the extradition of an Argentinean citizen is required, the citizen may opt to be placed on trial in Argentina (provided a bilateral treaty does not provide otherwise).

The Extradition Law also restricts international co-operation in the field of political crimes.

## Whistleblowing

41. Are whistleblowers given statutory protection?

In Argentina, the system of witness protection is regulated by the National Programme for Witnesses and Suspects Protection created by Law No 25,764. The National Programme is administered by the Secretariat of Justice under the Executive Power.

The system is intended for the protection of witnesses and defendants (either those who are co-operating or repentant criminals) who have made an outstanding contribution to a judicial investigation under federal jurisdiction and are therefore in a risky situation. Such investigations can include investigations into:

- Drug trafficking.
- Kidnapping and terrorism.

- Crimes against humanity committed between 1976 and 1983.
- Human trafficking.

The whistle-blowing system does not reduce penalties unless used for certain corruption crimes and other offences regulated by the Narcotics Law, where co-operation can reduce penalties by up to one-half of the minimum, or even exempt the whistle-blower from penalties when, during the conduct or before the start of the proceedings, the whistle-blower either:

- Reveals the identity of the participants in the crime.
- Provides information enabling the authorities to seize drugs, raw materials and other objects of the crime.

## Reform, trends and developments

42. Are there any impending developments or proposals for reform?

In March 2019, a new bill that will overhaul Argentina's Criminal Code was presented by the former administration before the national congress. It is currently under parliamentary discussion.

Among other changes, the draft establishes tougher penalties for corruption crimes and is the first comprehensive reform project of the Criminal Code since 1921.

According to official announcements, the new Criminal Code will be adapted to international commitments assumed by Argentina, particularly regarding the validity of the protection of human rights, the pursuit and financing of terrorism, drug-trafficking and corruption.

## Market practice

43. What are the main steps foreign and local companies are taking to manage their exposure to corruption/corporate crime?

To avoid or minimise the risk of corporate fraud or acts of corruption, companies should:

- Establish codes of ethics with clear anti-corruption and transparency policies.
- Perform periodical risk assessments to gain a clear understanding of the risks the company faces.
- Establish controllable and transparent processes for high-risk sectors of the companies (such as the purchase department, financial department or institutional relationships).
- Practice due diligence concerning suppliers and require the same processes and controls in accordance with the standards of transparency and quality of the company.
- Designate and grant high powers to compliance officers that regularly report to the company's headquarters.
- Conduct regular internal and external audits through leading companies.
- Have privacy policies in relation to work tools (e-mails, computers, and so on) that legally enable companies to monitor and review those items without incurring breaching constitutional rights.
- Provide internal training courses and hire outside consultants to provide legal and regulatory updates on emerging issues.

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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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