

# New Argentine Unified Civil & Commercial Code – Impact in the real estate market

by Pedro Nicholson



*As mostly all of the Latin American countries, Argentina is a civil law country, one of the principal effects of which is that the legislation is basically codified, and judges decide on the interpretation and scope of the law on a specific case (i.e. court decisions typically are not binding except for the parties involved, regardless the fact that court rulings are usually grounds for interpreting laws in the future).*

**In other words**, law is what generates formal rights in civil law countries, and judges just interpret how those rights should be applied to the instant case.

On the contrary, in common law countries, judges are real creators of law: in these countries case law (rule of precedent) is what one should especially take care of.

**The Civil and the Commercial Codes** are the two codes which rule the day to day lives (including, of course, business) in Argentina. These Codes contain the principal legislation that should be applied not only to the citizens in their daily lives, but also to the companies (and individuals) doing business in our country.

The Commercial Code was enacted in 1862 and was heavily amended in 1889. From then onwards, not many changes were made to this code.

**Argentina's Civil Code**, on its turn, was voted in 1869 and came in force in 1871. This code remained almost untouched until April 1968, when around 250 articles (from a total of about 4,000) were amended by Law 17,711. This code was recognized as one of the most prestigious in Latin America, and was inspiration for further civil codes in other countries in the area.

*This means that the Civil and Commercial Codes have been in force for the last 150 years.*

In the last decades, many attempts to unify the two Codes were made, though without success. However, *on October 1<sup>st</sup>, 2014*, Law 26,994 was enacted, which derogated both the Civil and Commercial Codes, and **“created”** a new Unified Civil & Commercial Code, which shall be in force as from August 1<sup>st</sup>, 2015. This shall have a huge impact on our legislation and especially, in our law practice.

**Until now**, any decent corporate lawyer in Argentina knew the Civil and Commercial Codes almost by heart, and also knew not only what the jurisprudence had interpreted on any specific article, but also what the most knowledgeable experts had written and stated about any specific matter.

With the enactment of the new Unified Code, the knowledge that was harvest throughout the years shall be almost completely wiped out, which means that every single lawyer in the country shall have to hit the books again and study the impact of this new Code, the scope of

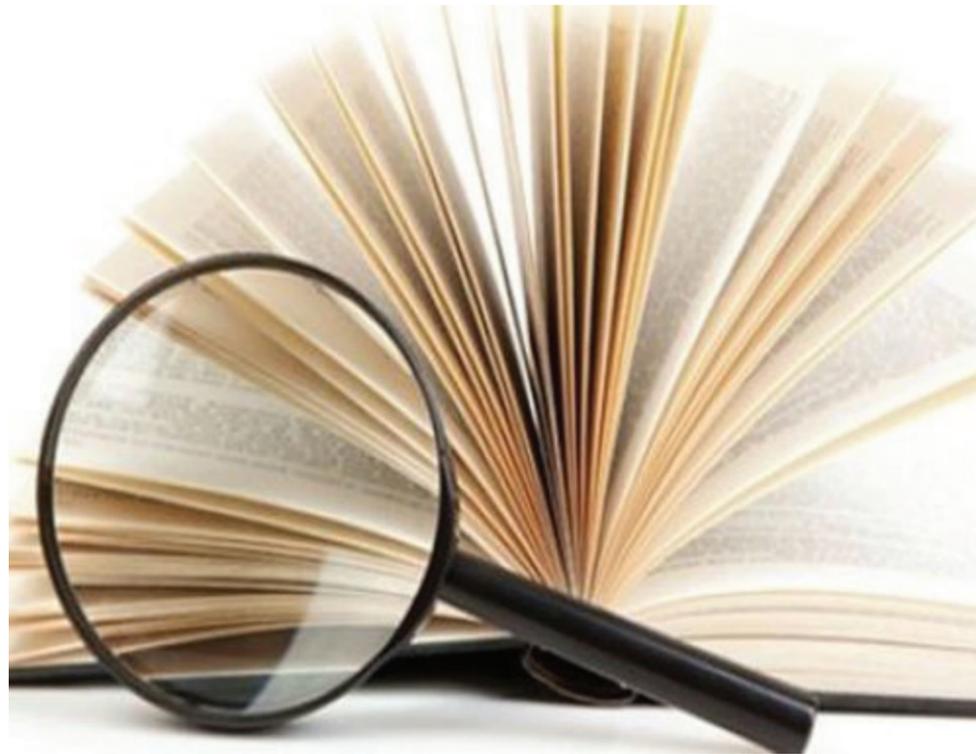
which -as said- shall be key to everyone's lives.

**The purpose of this article is likewise to mention just a few of the changes that the new Unified Code shall have on the regulations applicable to the real estate market:**

- **Trusts:** real estate trusts have been the most popularly used vehicle for structuring real estate projects during the last fifteen years. With the new Unified Code the structure of these trusts shall have some amendments which shall not affect their existence nor application, but nevertheless shall have to be borne in mind.

**Among others, we may find the following:**

- ◇ **Trust agreements** shall be registered, theoretically before a Registry which shall be newly created. There is no further information available about this.
- ◇ **Trustees** may be beneficiaries of the trust (which currently -with the law now in force- is subject to discussion).
- ◇ **Trustees** shall retain civil responsibility insurance to cover damages caused by the goods under trust. This, among other facts, shall cause the “creation” of an insurance which currently does not exist.
- ◇ **If the trust** shall be offered to the public, the trustee shall be a financial entity. This has not been the case in the majority of the real estate projects in the last



years in our country, although having in fact, been offered to the public.

◆ **The trust** may be revoked by the trustor, if that possibility is expressly foreseen in the agreement. The revocation shall cause the extinction of the trust (*i.e. this possibility does not currently exist in the law in force today*).

■ **Companies** with just one shareholder shall be accepted (*i.e. they are currently forbidden*). These companies shall be organized as corporations (*i.e. "sociedad anónima"*).

■ **Lease agreements** shall have a maximum term of 20 years for residential purposes, and of 50 years for all other purposes. This amendment is very positive, because the current maximum 10 years term has proved to be very insufficient in

many cases (*e.g. when a future lessee had to make a big investment, the 10 years' term usually turned out to be very short and inadequate to amortize the capital invested*).

■ **In construction** agreements, the owner shall be able to amend the project without the constructor's agreement, as long as those amendments do not affect "**substantially**" the nature of the work. We can imagine that the inconvenience may be faced here on the definition of what would be "**substantial**" and what shall not ...

■ **Until now**, the constructor (together with certain professionals, as the architects involved) was the only one responsible for the total ruin or destruction of the work. However, with the new Unified Code, the developer shall also have responsibility. We gather that new insurance policies shall have to

foresee the coverage of these new responsibilities.

- **The new Unified Code** created some new property rights, among them, the condominium right (*i.e. propiedad horizontal*) which has suffered some amendments from the one currently existing.
- **Such new "condominium right"** shall be the one to rule on all closed neighborhoods, no matter they are plain gated communities (*i.e. barrios cerrados*) or country clubs (*i.e. clubes de campo*). This would not be a problem if this regulation would apply just for the future: but unfortunately the new Unified Code foresees that all closed neighborhoods not organized as per the rules of the new condominium right, shall have to adapt their legal

structure accordingly. As one can imagine, this has brought some concern on the people living in such neighborhoods, especially because of the time, costs and expenses to be involved in such adjustment, as well as on the way such amendment shall be performed (*i.e. there is not much information available yet*).

As described, the new Unified Code shall bring many amendments to the laws and regulations currently applying to the real estate market (*i.e. the ones described above are just a few of them*).

This shall under no doubt impact on the way real estate projects shall be instrumented in the future, and it will be a great challenge for us lawyers to be innovative on the new legal scenario that will appear before our eyes.



**Pedro Nicholson**

*Partner at Estudio Beccar Varela*

**T:** +54 11 4379 6835

**Email:** pnicholson@ebv.com.ar

*Pedro Nicholson is the Head of the Real Estate and Hospitality Department of Estudio Beccar Varela. He has vast experience in real estate, hospitality, tourism, mergers & acquisitions and corporate finance. He has advised local and foreign clients in all sorts of local and international deals, including Prudential Real Estate Investors, JE Robert Companies, Groupe Accor, Groupe Casino, Groupe Saint-Gobain, C.B. Richard Ellis, Jumeirah International, The Rohatyn Group, K Group Holdings, Gafisa, Christies, Inc., Enjoy, Mc Kinsey, Ermenegildo Zegna, Round Hill Capital, Foster + Partners, Costa Activa, Bausch & Lomb, Interurban, Citibank, N.A., Groupe Saint-Gobain and G&D Developers.*