

ALMOST THERE!
CLOSER TO THE LIFT OF FOREIGN EXCHANGE CONTROLS IN ARGENTINA

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In furtherance of the Federal Government's quest to increase the flexibility of the foreign exchange regulations ("FX Regs"), to facilitate FX transactions and to promote the transparency of the local single and free foreign exchange market ("FX Market"), the Central Bank of Argentina ("CBA") issued Communication "A" 6244 (5/19/17) ("Com. 6244") by which it abrogated all regulations (i) on foreign exchange transactions, (ii) on financial institutions' ("FIs") foreign exchange general position, (iii) related to Executive Order Nr. 616/05 and (iv) on remittances of exports' proceeds into the FX Market and its oversight by FIs through the Exports' Collections Tracking System ("SECOEXPO"), effective as from July 1st, 2017¹.

Com. 6244 kept the validity of the reporting regimes related to such matters and also included an annex with a set of new FX Regs that will become valid and binding as from such date. It is worth noting that not all Com. 6244 provisions are crystal clear in some of the aspects they cover and therefore this rule has raised some questions and doubts amongst the financial and banking community that might be solved out once it becomes valid and applicable.

Com. 6244's annex lists the topics addressed by the new regulation, as follows: (i) general rules; (ii) other rules; (iii) operational guidelines for entities licensed to operate in FX (especially with regards to KYC and AML controls, clients' identity in FX transactions, etc.); (iv) a glossary of FX and foreign trade frequently-used terms; (v) rules on Argentine goods' exports; (vi) tracking of collections of proceeds of goods' exports; and (vii) tracking of advances and other financings of goods' exports.

1 For further information about the changes to and evolution of the foreign exchange controls introduced by President Macri's administration see Hernán D. Camarero, "*Winds of change in Argentina: New reforms in foreign exchange controls*", March 2016 Volume 5, Issue 1, International Financial Products & Services Committee Newsletter, American Bar Association, Section of International Law; and "*Untying the Gordian Knot: Progressive liberalization of foreign exchange controls in Argentina*", December 2016 Volume 5, Issue 4, International Financial Products & Services Committee Newsletter, American Bar Association, Section of International Law.

The purpose of this article is to briefly review the most significant changes introduced by Com. 6244, as follows:

General rules.

- *Freedom to transact in FX:* It reaffirms that all physical and juristic persons, as well as universalities (estates and trusts) may freely operate in the FX Market at the FX rates freely agreed by the relevant counterparties. FIs may freely fix the level and use of their general foreign exchange position. All FX transactions, swaps and arbitrages pursuant to FX Regs should be executed through an FIs or FX-licensed entities.
- *Obligation to transfer proceeds of goods' exports (inclusive of ancillary services included in FOB and CIF values) into the FX Market stays:* in fact this is not new. The term to do so is 10 years as from the goods' loading date (*cumplido de embarque*)².

Other rules.

- *Freedom to operate in the FX Market without mandatory business hours:* current business hours for entities licensed to operate in the FX Market are 10AM to 3 PM. As from July 1, 2017 they may transact in foreign exchange with extended business hours, previously reported to the CBA by the relevant FX-licensed entities.
- *Compliance with reporting regimes:* the corresponding subjects should keep on complying with the foreign liabilities reporting regime (CBA Com. "A" 3602, as amended) and/or the direct investments regime (CBA Communications "A" 4237 and ancillary).
- *Automatic credit of foreign transfers of funds:* Com. 6244 introduces the possibility of automatic credit of fund transfers coming from abroad in the beneficiary's local account –when the transfer includes the local account information- without the client's participation, unless otherwise instructed by the client.

² Resolution Nr 47 –E/2017, Secretariat of Trade, Jan 20 2017 sets a 3,650 calendar days-term to transfer the exports' proceeds to the FX Market.

- *Paperless FX transactions*: CBA is taking another huge leap towards doing away with tons of paperwork that clients had to file to the banks every time they wanted to access to the FX Market, except for FX transactions related to goods' exports and reporting regimes, as indicated above. FX transactions slips and affidavits will be no longer necessary; this will be a relief for clients and especially for those licensed to operate in the FX Market. Clients' electronic and digital signatures are allowed, subject to specific requirements.

Operational guidelines for entities licensed to operate in FX.

- *Global FX transactions daily records*: The entities authorized to operate in FX transactions may carry a global ledger for certain kind of FX transactions insofar as much all conditions required for each case are met. These transactions are (i) collections and payments in consideration of retirement and pensions, (ii) clients' personal transfers (residents and foreigners human and juristic persons), and (iii) transactions of payments' processing companies.

Glossary.

- *Uniform terms used in FX transactions*: it includes such terms as resident, economic group, cash transactions (*operaciones al contado*), time transactions (*operaciones a término*) and other kind of FX-related terms.

Rules related to Argentine goods' exports.

- *Comprehensive set of rules*: Com. 6244 unifies these rules in a single comprehensive chapter, ordering them in a clearer way, in benefit of exporters, financial institutions and even foreign lenders –trade finance- demanding the match (hedge) of the collections of exports' proceeds by the resident exporter with their loans and facilities' schedule of principal and interests' payments. Current rules on this topic are included in several scattered communications that since 2001 have been issued by the CBA and that they constitute a very complex and entangled specific regulatory regime.

- *Exports' proceeds may not come from foreign importers:* Upon or prior to the expiry of the 10-years term to transfer the exports' proceeds into the FX Market, the local exporter may opt to transfer its own funds deposited abroad and not necessarily those effectively paid by the foreign importer. This allows the local exporter to freely use the proceeds collected within such term easing the burden of being bound to seek interim financing until the expiry of the term to remit the proceeds into Argentina.
- *Exports' proceeds may not be credited in the exporter's local bank account:* this was a former requirement that shall no longer apply as from July 1st, 2017.
- *Increases threshold for exports without consideration:* There are certain goods' exports that may not include a monetary consideration (e.g. *inter alia* goods without commercial value, samples not for commercial use, gratuitous goods, etc.) or which net consideration is lower than the amount stated in the export deed. In these cases in order to show the CBA that there was no duty to remit a collection from abroad into the FX Market or that any shortfall thereof is justified (e.g. banking transactional expenses), exporters should meet certain requirements. One of these requirements is that the FOB or CIF value of the export deed does not exceed US\$ 25,000, a new threshold amount.

Tracking of advances and other financings of goods' exports.

- *General amendments to the SECOEXPO:* the tracking system's rules were generally reviewed and modified in order to adapt them to the new regulations.

Since the FX control still applies in Argentina –i.e. although the system was substantially amended and simplified it was not abrogated-, any infringement to FX Regs shall still be punished under the foreign exchange criminal regime. Likewise, standard Anti-Money Laundering and Know Your Customer statutory controls by FIs and FX-licensed entities remain in place and should be complied with.

The trend towards full liberalization of FX controls in Argentina continues to move forward as one of the current Administration's goals. However, Com. 6244 may require some further amendments by the regulator in order to avoid unclear provisions that may hinder the fulfillment of such ambitious target.

Simplifying FX controls restores foreign trade in Argentina to internationally-used and standard practices, with less intervention of the State in private transactions, allowing local importers and exporters to bargain with their counterparties' the habitual commercial and business terms and conditions for trade-related operations.

The decrease of bureaucratic steps in the execution of FX transactions shall not be only beneficial to clients but also to FIs, which in the last 15 years have been overwhelmed and overloaded by the quantity of information and documentation they were bound to collect prior to giving access to the FX Market.

Undoubtfully these regulatory changes shall be very appreciated by international direct investors wishing to set their business operations in Argentina, either as a first-landing investment or by acquiring local ongoing business and assets.

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