RICHARDS CARDINAL
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DOING BUSINESS
in Argentina

Antitrust

Issues regarding economic concentrations

For purposes of conducting business in Argentina, a foreign investor is likely to purchase stocks or other equity interests in Argentina. The Argentinean Antitrust Act (Act Nr. 27,442 or "LDC", enacted on 2018 and regulated by Decree Nr. 480/2018) establishes that certain operations of economic concentration must be approved by the National Antitrust Authority. However, considering this Authority has not been yet created, economic concentrations must be submitted for approval before the National Antitrust Commission ("Comisión Nacional de Defensa de la Competencia" or "CNDC").

The LDC applies to all individuals or companies who operate in whole or in part in Argentina and also to those individuals or companies who engage in economic activities outside the country, but nevertheless produce effects on the domestic market. The CNDC takes into consideration the "economic reality" principle in order to assess this matter.

Acts of economic concentration of companies that need to be previously submitted for approval before the CNDC – provided they surpass certain amounts- are:

- the merger of companies;
- the transfer of goodwills;
- the acquisition of the property or any other right over shares or equity stakes or debt securities that grant any right to be converted into shares or equity stakes or to have any kind of influence in the decisions of the person that issues them, when that acquisition grants the buyer the control or the substantial influence over the company;
- any other agreement or act that transfers to a person or holding in a factual or legal manner the company's assets or grants determining influence in the adoption of ordinary or extraordinary management decisions of a company or
- any of the acts described in point (iii) that imply the acquisition of substantial influence of the competitive strategy of a company.

These concentrations must be submitted for approval before the CNDC if the aggregate of local sales volume of all affected companies within the country for the last fiscal year exceeds 100.000.000 of mobile units, currently equivalent to ARS 5.529.000.000. The submission must be made within one week after the date in which the agreement concludes, after the publication of the offer or exchange or after the acquisition of a controlling stake, whichever occurs first.

Even though the previous approval procedure does not entail the suspension of the transaction, the concentration will only be effective among the parties and vis-à-vis third parties once it is expressly or tacitly approved. It is common practice to include among the provisions of the purchase or sales agreement clauses: (i) suspension of the effects of the transaction until it is approved; and/or (ii) regulating the procedure in case of its rejection or conditioning by the CNDC (e.g., possible structural and/or behavioral constraints).

LDC Act also provides some exceptions in which the economic concentration shall not be submitted for approval, which are interpreted restrictively.

Failure to comply with the submission for approval before the LDC may give rise to the imposition of fines of up to a daily amount of 0,1% of the consolidated turnover in Argentina registered by the holding to which the transgressors belong, during the last fiscal year. In case this criteria cannot be applied, the penalty may be of a sum of up to 750.000 mobile units, currently equivalent to ARS 34.957.500, not being these penalties subject to any kind of reduction.

Issues regarding anticompetitive practices

The LDC lists a series of acts which are considered restrictive practices per se, and as such are presumed to harm to the general economic interest. Consequently, these practices are strictly forbidden.

The list includes:

- Price fixing;
- Establishing obligations of producing, processing, distributing, buying or commercializing a limited quantity of goods and/or rendering a restricted number, volume or frequency of services;
- Allocating zones, markets, customers or sources of supply;
- Establishing, arranging, or coordinating of postures or abstentions in tenders, contests or auctions.

Also, the LDC lists a set of practices that are prohibited on a rule of reason basis, as long as they aim to limit, restrict or distort the competition or the access to the market, or that constitute an abuse of monopoly power in a certain market in a way that can harm the general economic interest.

Monopoly power occurs when - for a certain type of product or service – one or more persons are the only suppliers or buyers within the national market or in one or several parts of the world,

or when without being the only one, these persons are not exposed to substantial competition or when, due to the vertical or horizontal degree of integration, these persons are able to determine the economic viability of competitors that participate in the market, harming them. The CNDC decides dominance cases on a case-by-case basis. Also, a firm accused of abusing its monopoly power can justify the anti-competitive practice on the basis of the potential efficiencies derived from the practice.

If a forbidden practice is proved to have occurred, besides of the duty to cease with the practice, infringing companies may be fined (i) with a penalty of up to 30% of the turnover related to the products or services involved in the illicit act during the last fiscal year, multiplied by the years during which the illicit act occurred, which may not exceed the 30% of the consolidated turnover at the national level registered by the holding to which the infringers belong, during the last fiscal year; or (ii) up to the double of the economic benefit reported by the illicit act; choosing the CNDC to apply the higher penalty that results from (i) or (ii). In case the penalty cannot be determined according said criteria, the fine could be of up to ARS 11.058.000.000 ARS.

Also, the CNDC may impose the compliance of conditions that aim to neutralize the distorting aspects caused by the anticompetitive practice, or even request a judge to order the dissolution, division or liquidation of the infringing companies. The CNDC may also determine the suspension of the companies before the National Registry of State Suppliers for up to 5 or 8 years, depending on the case.

Notwithstanding these penalties, LDC has created a leniency program by which infringing persons or companies may benefit from an exemption or reduction of the described penalties in case they have been part or are being part of a collusion agreement that constitutes a per se forbidden practice, provided they reveal and recognize their participation and subject to the compliance with some conditions established by LDC.

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Compliance

Criminal liability of business entities

a) Scope of the Act

The Corporate Criminal Liability Act Nr. 27,401 ("CCLA") punishes private business entities (domestic or foreign, State-owned or not), for committing directly or indirectly, by them or on their own behalf or for the benefit of a third-party, the following crimes:

- Bribery and wrongful lobbying in consideration for a benefit, in the country or abroad (sections 258 and 258 bis of the Argentine Criminal Code ("ACC")).
- Dealings incompatible with holding office as a public officer (section 265 ACC).
- Benefits received from bribes collected by a public officeri or bribes requested for the official's own benefit or on behalf of a third party (section 268 ACC).
- Unfair enrichment of public officers and employees (sections 268 (1) and (2) ACC).
- Aggravated crime of filing false balance sheets and reports (section 300 bis ACC).

b) Punishments

Section 7 CCLA sets forth several punishments, which range may be determined as per the judge's discretion, that shall be applied pursuant to the following guidelines:

- Fines ranging from two to five times the amount of the undue benefit obtained or that may have been obtained;
- Total or partial suspension of activities, not to exceed ten years;
- Suspension to participate in governmental bids or tenders of public services or works, or any other activity related to the Government, not to exceed ten years;
- Dissolution and wind-up of the entity if it was created for the sole purpose of committing a crime, or its main purpose is to commit crimes;
- Loss or suspension of granted Governmental benefits, if any.
- Publication of an extract of the conviction decree.

c) Exemptions

CCLA provides for exemptions to the listed sanctions. To be eligible for such exemptions, the following requirements must be met simultaneously:

- The entity must have reported the crime spontaneously, as a result of its own internal investigation;
- The entity must have implemented an adequate monitoring and control system; and
- The entity must have disgorged all undue benefit obtained.

d) Integrity Program

One of such requirements is the implementation of a monitoring and control system. CCLA establishes that some business entities are obliged to create an Integrity Program when entering into certain contracts with the Government[1].

Section 22 states the mandatory contents of the Integrity Program applicable to all business entities that implement it, regardless of whether they are obliged by law or not, as follows:

- A code of ethics or a code of conduct, or the existence of integrity policies and procedures applicable to all directors, managers and employees, irrespective of their position or function, to guide the planning and execution of their tasks in order to prevent the commission of crimes under this Act.
- Specific rules and procedures to prevent crimes in contests and tender processes, in the execution of administrative contracts or in any other interaction with the public sector.
- Regular training with regards to the Integrity Program for directors, managers and employees.

[1]Licensees of public services and public works contracts, public-private partnerships, contracts which estimated cost is greater than 80 modules or 48 modules for direct contracting. As of today, Section 28 of Executive Order No, 1030/2016 establishes that one module equals to a total sum of AR$ 3,000. This amount shall be adjusted from time to time.

Gifts to Public Officials

a) General rules and exemptions

Executive Order No 1179/2016 forbids any person holding office as a public official from receiving gifts, benefits or payments in exchange for services or goods, including free transfer of their use, as a result of or in connection with the performance of their duties.

An exception to this rule are gifts received for diplomatic customs and courtesy. However, although some gifts are permitted under CCLA, they must not be received from any person that:

- Carries out activities regulated or controlled by the agency or entity in which the official holds office;
- Manages or exploits licenses, authorizations, privileges or allowances granted by the agency or entity within which the official holds office;
- Is a contractor or supplier of work, goods or services of the agency or entity within which the official holds office;
- Seeks a decision or action of the agency or entity within which the official holds office;

- Has interests that could be significantly affected by a decision, action, delay or omission of the agency or entity within which the official holds office.

b) Registration

Authorized gifts must be duly registered in the "Registry of Gifts to Public Officials". The following information is needed for registration:

- Name, identification and office held by the Public Official who received the gift;
- Goods or services received by the Public Official;
- Identification of the person (governmental body, individual or entity) who made the gift;
- The date on which it was received.
- The context, event or activity where the gift was received and venue; and
- In certain cases, the intended recipient.

General provisions for the disclosure of interest management within the Executive Branch

a) General rules and exemptions

ANNEX III of Executive Order Nr. 1172/2003 establishes a regime for hearings and meetings held by the following public officials:

- The President of the Argentine Republic;
- The Vice President of the Argentine Republic;
- Chief of the Ministerial Cabinet;
- Ministers;
- Secretaries and Undersecretaries;
- Federal Supervisor;
- Higher authorities of agencies, entities, companies, units and any other entity operating under the jurisdiction of the Executive Branch;
- Public servants with an executive function whose level is equivalent to that of a General Director.

All hearings and meetings with these public officials held with the purpose of influencing the exercise of any of the functions and/or decisions of the agencies, entities, companies, units and any other entity operating under the power of the Executive Branch, must be registered. However, the following exemptions thereto apply:

- When the subject matter of the hearing had been expressly described by an executive order or by any law as confidential or as containing confidential information; and
- In the case of a written statement incorporated into an administrative file.

b) Registration

Business entities should provide the following information in order to register such meetings:

- The hearing's request;
- Information about the applicant;
- Interests alleged;
- Attendees;
- Place, date, time and purpose of the hearing;
- Summary of the content of the hearing; and
- Minutes of hearings actually held.

Conflicts of interest (Executive Order No. 2020/2017)

Any person who participates in a public procurement process or any other process for the granting of licenses, permits, authorizations or ownership rights to property owned by the Government, called by any of the entities within the Federal Public Sector, must file an affidavit. Its purpose is the representation of any interests that may qualify under any of the categories named below that are, at the same time, related to the President, the Vice-President, the Ministers and other authorities of the same rank as that of the officials in the Executive Branch. This requirement is mandatory even if the participant does not have the power to decide on the recruitment process or the result of said process.

Such categories are:

- Kinship by consanguinity within the fourth and second of affinity;
- Society or community to which the person belongs;
- Pending litigation;
- Debtor or creditor status;
- Reception of significant benefits; and
- Disclosed friendship exposed by showing great familiarity and frequency in the treatment.

Participants must also file the aforementioned affidavit in the event their interests relate to a public official ranked lower than minister's status and has the power or is able to decide on the results of the recruitment process or act on behalf of the participant's interests. The affidavit should be filed when the participant registers as a supplier or contractor of the Federal Government in the corresponding registries.

Failure to submit the affidavit in a timely manner, shall be considered sufficient cause for exclusion from the relevant process. Any false information is a serious misdemeanor, and the corresponding penalty shall apply.

Anti-corruption Clause

According to the provisions set forth by Executive Order Nr. 1023/2001, a proposal or offer, regardless of the stage of the tender, may be rejected or the contract terminated, if any money or gifts are offered so that:

- Public officials with authority over tenders or contracts do or fail to carry out acts in connection with their duties;
- Public officials impose their influence due to their position on another public official with the authority described above, so that the latter does or fails to carry out acts in connection with their duties; or
- Any person uses their relationship or influence over a public official to force them to use their powers as described above.

Prevention of money laundering and terrorism financing

a) Act Nr. 25,246 (as amended) ("AML Act")

i. Financial Information Unit.

The Financial Information Unit ("FIU") is an independent and financially autarchic agency under the National Ministry of Finance. Its purpose is to analyze, transmit and share information in order to prevent money laundering and terrorism financing. Its powers comprise, among others, the following:

- To receive, request and store information of certain entities, which may only be used in an ongoing investigation;
- To order and lead the analysis of acts, activities and operations that, pursuant to the provisions of the Act, configure money laundering or terrorism financing activities, to gather sufficient evidence to charge a person with such crimes, and, consequently, to commence the appropriate legal action that would oversee the Public Prosecutor's Office; and
- To cooperate with the Judiciary and the Public Prosecutor's Office in the criminal prosecution of offenders punishable under the Act.

ii. Obliged subjects

Certain persons are obliged to make available to the UIF documentation collected from their clients and report the behavior or activities of business entities and individuals, from which the existence of an atypical situation that may lead to a suspicious act or transaction of money laundering or terrorism financing may be inferred.

In addition, business entities are required to appoint a compliance officer who oversees monitoring compliance of such entities with the regulations applicable thereto due the activity they perform.

Pursuant to AML Act obliged subjects are:

- Financial institutions;
- Entities that engage in the purchase and sale of foreign currency in the form of money or checks payable in foreign currency or by the use of credit or debit cards, or in the transfer of funds within and outside the country's territory;
- Individuals or business entities who regularly engage in gambling;
- Business entities registered in the National Securities Commission to act as intermediaries in authorized markets;
- Business entities authorized by the National Securities Commission to act within the framework of collective financing systems using web portals or other similar means;
- Public trade Registries, representative bodies for the supervision and control of business entities, Registries of Deeds, Registries of vehicles, Registries of liens, Registries of all types of ships and aircraft Registries.
- Individuals or business entities that engage in the sale of works of art, antiques or other luxury goods, philatelic or numismatic investment, or in the export, import, processing or industrialization of jewelry or goods containing precious metals or stones;
- Insurance companies;
- Companies issuing traveler's checks or credit or purchasing card operators;
- Companies that provide cash transportation services;
- Postal service providers or concessionaires that carry out currency transfers or transfers of different types of currency or tickets;
- Notaries Public;
- Companies carrying out capitalization and saving operations;
- Customs brokers;
- Public administration agencies and decentralized and/or autonomous entities that perform regulatory, controlling, supervisory activities and/or superintendence activities over economic activities and/or legal businesses and/or over any other legal person, be it individual or collective.
- Producers, insurance advisers, agents, intermediaries, insurance experts and liquidators.
- Registered professionals whose activities are regulated by economic councils;
- Business entities receiving donations or contributions from third parties;
- Registered estate agents or brokers and companies of any kind that do business in the real estate broker business;
- Mutual companies and cooperative businesses;

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- Registered professionals whose activities are regulated by economic councils;
- Business entities receiving donations or contributions from third parties;
- Registered estate agents or brokers and companies of any kind that do business in the real estate broker business;
- Mutual companies and cooperative businesses;

- Individuals or business entities that normally engage in activities such as sale and purchase of cars, trucks, motorcycles, buses and long-distance buses, tractors, agricultural and road machinery, ships, yachts and the like, aircraft and aerodynamics;
- Individuals or business entities acting as trustees, in any type of trust, and individuals or legal entities that hold or are linked, directly or indirectly, to trusts, fiduciary accounts under trust contracts; and
- Business entities performing organizational and regulatory activities for professional sports.

iii. Punishments

Sections 23 and 24 provide for a set of punishments for the infringements of the AML Law , as follows:

- A fine ranging from five to twenty times the value of the goods that are the object of the offence, shall be applied on a business entity which executive body has collected or provided goods or money, regardless of its value, knowing that they would be used by a member of an illegal terrorist association.

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Environment

Pursuant to section 41 of the Argentine Constitution, all inhabitants are entitled to the right to a healthy and balanced environment and have the duty to preserve and repair it.

In this regard, under section 41 of the Constitution, authorities shall protect the rights to a healthy and balanced environment, to the reasonable use of natural resources, and the preservation of the natural, cultural and biodiversity heritage.

Furthermore, our Constitution establishes that any person shall file a prompt and summary action for the protection of constitutional rights against any act or omission of the public authorities or individuals that damage, limit, modify or threaten rights and guarantees recognized by the Constitution, or may imminently do so. The aforementioned rights include those related to the preservation of the environment, as provided by section 43 of the Constitution.

Provinces and the City of Buenos Aires have the power to pass legislation governing the protection of the environment and natural resources, as provided by the Federal system under the Constitution. However, the Federal Government is empowered to establish the minimum protection standards with regard to environmental protection, which apply in the entirety of Argentina. Consequently, local protection rules cannot provide for protection that is lower than the standards set forth by the Federal Government by means of minimum standards laws.

In conclusion, having analyzed the body of the Constitution and the effective federal laws, it is of key importance to observe the local legislation in the province where the activities are carried out.

The most relevant Federal Laws on this subject-matter include:

a) Act No. 25,675

The Federal Environmental Policies Act (2002) sets forth the minimum standards with regards to the achievement of sustainable and adequate management of natural resources, to the preservation and protection of biodiversity, and to the implementation of sustainable development.

The aim of this Act is to promote the rational and sustainable use of natural resources, to keep the balance and dynamic of ecosystems, to ensure the preservation of biodiversity and to

prevent environmental degradation caused by human activities.

The Act establishes that those who degrade the environment are liable for the costs of preventive and corrective restoration actions, notwithstanding the applicability of existing liability systems in connection with the environment.

Consequently, it is of key importance for those who conduct activities or perform construction activities that may cause the degradation of the environment or one of its components, or affect people's quality of life, to perform the environmental impact assessment before carrying out such activities.

Entities and individuals shall provide information about environmental quality and about the activities they conduct. Furthermore, they must be sufficiently insured in order to cover the restoration of any damages that they may cause.

Civil or criminal liability for environmental damage may be incurred separately from administrative liability. In the event that environmental administrative rules have been violated, an irrebuttable presumption arises that the author is liable for such environmental damages.

b) Act No. 24,051

The Hazardous Waste Act (1991) governs the generation, management, transportation, treatment and disposal of hazardous waste generated or located at places under federal jurisdiction or, even if such places were located within a province, when such waste is intended to be transported to another province. This Act applies as well to waste that may affect people or the environment beyond the borders of the province where it was generated.

The Act establishes that importing, inserting or transporting any type of waste that comes from foreign countries or outside Argentina's sea or air territory is forbidden.

Any person that conducts any of the activities described in the first paragraph must register in the Federal Registry of Generators and Managers of Hazardous Waste so as to obtain an Environmental Certificate, which shall evidence the approval of the final management, transportation, treatment and disposal system that registered persons shall apply to hazardous waste.

Non-compliance with the law and its implementing and complementary rules shall lead to sanctions such as warnings, fines, suspensions or cancelation of registration, notwithstanding the civil or criminal liability that may be imposed on the wrongdoer.

c) Act No. 25,612

Industrial and Service Provision Waste Comprehensive Management Act (2002) sets forth the minimum environmental preservation standards applicable to the comprehensive management of waste generated by industrial activities and provision of services throughout the country.

The Act establishes that importing, inserting or transporting any type of waste that comes from foreign countries or outside Argentina's its sea and air territory is forbidden.

Any individual or entity that generates waste as a result of industrial activities or provision of services must implement the appropriate measures so as to reduce the amount of waste generated. In addition, such individuals or entities must appropriately separate waste that is incompatible with other types of waste, as well as reuse or recycle the waste they generate. Furthermore, individuals and entities must periodically file with provincial authorities and authorities of the City of Buenos Aires an affidavit whereby they are to identify and set forth the characteristics of waste and the activities that generate it.

The nature and quantity of waste, its origin and transfer from the generator to the carrier and from the carrier to the treatment or disposal facilities and any other operation shall be recorded in a document that shall be deemed as a sworn statement.

Any person found in violation to the provisions of this Act shall be subject to sanctions such as warnings, relevant fines, temporary or definite suspension of authorizations and registrations, or suspensions of activities from 30 days to a year.

d) Act 25,916

The Management of Solid Waste Act (2004) provides for the minimum standards for environmental protection with regard to the comprehensive management of solid waste generated in private households, urban areas, commercial and industrial waste, among others. This comprehensive management includes the stages of generation, discard, collection, transfer, transportation, treatment and disposal.

Notwithstanding any criminal or civil penalties that may be imposed, any violation of the provisions under this Act shall lead to the imposition of warnings, relevant fines, suspension of activities for a period of 30 days up to 1 year, and permanent suspension of activities jointly with closure of establishments.

Furthermore, the Act forbids the import or insert of solid waste generated in foreign countries.

e) Act 25,688

The Water Use and Conservation Management Plan Act (2002) sets forth minimum environmental standards needed for the preservation, management and reasonable use of water.

Prior authorization from the competent authorities must be obtained in order to use the water protected under this Act. Moreover, approval from the Interprovincial Waters Commission must be obtained when interprovincial waters are intended to be used and, as a result, the environmental impact is stronger on one of the jurisdictions involved. The power of the Commission to grant such approval arises out of the jurisdictions comprised in it.

f) Act 20,284

Act 20,284 (1973) provides for a Prevention Plan for critical instances of atmospheric pollution applicable to all sources capable of polluting the atmosphere that are situated within federal territories and provinces that adopted the Plan.

Each local sanitary authority shall determine the maximum levels of pollution produced by the different types of fixed sources in each area. Furthermore, all authorities have the power to declare the implementation of the plan and the power to monitor compliance with such prevention plan for atmospheric pollution. This plan shall provide for the adoption of measures that, depending on the graveness of the situation, shall give power to limit or forbid operations and activities from being carried out at the affected area so as to preserve people's health.

Any violations to this Act shall be sanctioned by imposing fines, temporary or permanent closure of contamination sources, temporary or permanent disqualification from operating vehicles used for air, land, sea and other types of waters transport.

g) Act 26,331

Act 26,331 (2007) sets forth the minimum standards for environmental protection for the enrichment, restoration, preservation, use and sustainable management of local forests.

Individuals and legal entities must be granted permission prior to conducting any of the aforementioned activities so as to sustainably manage local forests. Moreover, petitioners may be obliged to subject their activities to a Sustainable Management of Local Forests Plan in certain cases. The Plan must comply with the minimum conditions for persistence, continued production and continued environmental services that such forests render to society. Conversely, the petitioner may be obliged to implement a Change in Land Use Plan,

which must establish minimum conditions of continued production over short, medium or long periods of time and it must contain provisions on the use of technology that ensures that the activities to be conducted lead to efficient results.

Local authorities shall grant permits for deforestation or sustainable use by conducting an evaluation process where environmental impact is taken into account.

Notwithstanding the fact that sanctions for non-compliance with the provisions of the Act shall be set forth by each jurisdiction, sanctions contained in the Act shall complementarily apply. Sanctions under the Act include, without limitation, relevant fines, suspension or revocation of authorizations, among others.

h) Act 26,562

Act 26,562 (2009) provides for the minimum standards for environmental protection related to controlled burning activities carried out throughout the country. These standards are used to prevent fires, environmental damage and risks affecting public health and safety.

The Act expressly bans any controlled burning that is carried out without authorization granted by competent local authorities.

In the event the Provinces or the City of Buenos Aires do not provide for sanctions, the applicable sanctions shall be those under the Federal Act, which include, but are not limited to, warnings, relevant fines, suspension or revocation of other permits to conduct controlled burnings.

i) Act 26,639

The purpose of the Minimum Standards for the Preservation of Glaciers and Periglacial Environment Regime (2010) is to preserve glaciers and the periglacial environment as strategic water reserves for human consumption, tools for agricultural activities, water sources for watersheds, sources of scientific discoveries, tourist attractions and as means to protect biodiversity.

Glaciers are public domain goods owned by the Government and any activity that may tamper, destroy or interfere with their natural condition is forbidden.

Prior to conducting any activity that is not prohibited, an authorization must be obtained. The granting of such authorization shall be subjected to a strategic environmental evaluation and an evaluation process in which environmental impact is taken into account.

Sanctions under Act 26,639 for non-compliance include warnings, relevant fines, suspension or revocation of authorizations and permanent cessation of activities.

j) Act 25,831

Act 25,381 (2003) provides for the minimum standards for environmental protection so as to guarantee the right of access to environmental information owned by the Government at a federal, provincial and municipal level, and by the City of Buenos Aires, autarchic bodies and businesses that render public services.

Access to information on the environment is free and gratuitous for both, individuals and legal entities, and the only requirement is that they file a petition before the appropriate authority specifying which information is required and providing information identifying the petitioner.

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Regulatory matters

In Argentina, complexity of regulations varies depending on the economic activity conducted.

For example, in the food, hotel, clothing and technology businesses, regulations are not as complex as in other businesses such as in telecommunications, pharmaceutical, banking and prepaid medicine businesses.

a) Electric energy

Under Act No. 24,065 the transmission and distribution of electric energy have been established as public services. Within the City of Buenos Aires and its surroundings, these activities, considered as natural monopolies, are carried out by private legal entities to whom the Executive Branch has granted a concession in accordance with the current legislation.

This Act sets out the general guidelines for the activities, setting forth the conditions under which the services must be provided, and which conducts are not permitted. While sanctions for non-compliance with the regime are provided for by each concession contract in particular, the law contains penalties for breaches of the provisions of the Act and other regulations by non-concessional third parties. These penalties include fines, disqualification, suspension of activities and/or forfeiture.

b) Natural gas

Under Act No. 24,076, the transmission and distribution of natural gas were also established as public services. Within the City of Buenos Aires and its surroundings, these activities —considered natural monopolies— are carried out by business entities, that have been selected by means of a public tender process, and to whom the Executive Branch has granted a concession, license or permit in accordance with current legislation.

This Act and Executive Order No. 1738/92 provides general guidelines for the performance of the activities, setting out the conditions under which the services must be provided and which behavior is not permitted. While sanctions for non-compliance with the regime are provided for by each concession contract in particular, the law provides for penalties for violations of the provisions of the Act and Executive Order by non-concessional third parties. These penalties include fines, suspension and disqualification from conducting activities.

c) Drinking Water and Wastewater

Acts Nos. 26,221 and No. 26,100, and Executive Order No. 304/2006, govern the distribution of drinking water and the treatment of wastewater. Executive Order No. 304/2006 created AYSA S.A., which is the legal entity in charge of distributing drinking water and treating wastewater within the City of Buenos Aires and its surroundings. The Federal Government owns 90% of the entity's capital stock.

By virtue of Act No. 26,221, the distribution of drinking water and treatment of wastewater are considered public services, and the license of such services has been granted to AYSA S.A. Furthermore, this Act provides for the regulatory framework for the provision of such services. The penalties set forth in this Act are only applicable to the licensee entity and its employees.

d) Telecommunications

Telecommunication services are mainly governed by the National Telecommunications Act (Act No. 19,798) and the Argentine Digital Act (N° 27,078) which was recently amended by Executive Order No. 690/2020.

Act No. 19,798 broadly governs telegraph, telephone, radio communication, and amateur radio services, and it also sets forth provisions related to national security. Act No. 27,078 established that Information and Communications Technology Services, Telecommunications and other related resources are of public interest. But, recently, Executive Order No. 690/2020 amended this Act by establishing that these activities are essential public services, and it placed limitations on the increase in tariffs charged for the provision of such services.

On the other hand, Act No. 19,798 governs the granting of licenses, the use of technological means for the purpose of guaranteeing the human right of access to telecommunications, together with gaining access to the resources available for the fulfilment of that purpose.

Any breach of the Act may result in the imposition of sanctions such as warnings, fines, suspension of activities, closure of establishments, disqualification, forfeiture of equipment and materials, and expiration of the license, registration or authorization or permit revocation.

Regulatory matters

Other highly regulated industries

a) Financial entities

This activity is governed by the Financial Entities Act No. 21,526, which regulates the constitution and operation of such entities. In addition, these entities are subjected to the regulations issued by the Central Bank of the Argentine Republic with regards to the financial system, the capital market, the authorization to operate in the market and the imposition of punishments for violations of the regulations.

b) Insurance companies

These companies are regulated by the Insurance Entities Act No. 20,091, which sets forth provisions with regards to the constitution of insurance companies. Insurance companies are also governed by the Insurance Act No. 17,418, and by the Resolutions issued by the National Insurance Superintendency (hereinafter, "SSN" after its acronym in Spanish). The SSN is empowered to authorize the operation of insurance companies and the types of insurance policies offered. The SSN is also in charge of imposing sanctions to non-compliant agents and of regulating the operation of the insurance industry in a broad sense, which is provided for by the General Regulations of the Insurance Industry Activities (Resolution No. 21,523/92 issued by the SSN).

c) Prepaid medicine

This activity is regulated by Prepaid Medicine Act No. 26,682 and its Implementing Executive Order No. 1993/2011, which are applicable to Health Insurance Agents. The Superintendency of Health Services, which was created by Executive Order No. 1547/2007, is the enforcement authority of the aforementioned rules and regulations. The Superintendency is also in charge of imposing sanctions to non-compliant agents.

d) Pharmaceutical industry

Broadly speaking, this industry is regulated by Pharmaceutical Activities Act N° 17,565 and its Implementing Executive Order No. 7123/68.

Being a highly regulated activity, the pharmaceutical industry is also governed by the resolutions issued by the Ministry of Health and the provisions issued by the National Administration of Drugs, Foods and Medical Devices, an agency created by Executive Order No. 1490/92 with broad powers to issue regulations on the matter and impose sanctions to non-compliant agents.

Regulatory matters

General Economic Regulations

a) Supply Act and Price Control

The Supply Act No. 20,680, regulates the provision of products and services to meet basic and essential needs with the purpose of protecting the general welfare. Accordingly, Congress named an enforcement authority (currently, the Secretariat of Domestic Commerce) that is in charge of monitoring compliance with the Act, together with the Provinces and Municipalities. This Act seeks to identify and punish:

- artificial and unjustified increase in prices;
- hoarding of raw materials or products;
- unnecessary intervention that creates stages of distribution and marketing;
- destruction of goods;
- unjustified denial or restriction of the sale of goods or provision of services, or reduction without justification of normal production;
- discontinuance of normal supply without cause; among others.

In the event of non-compliance, the Secretariat of Domestic Commerce is authorized to impose sanctions such as fines (ranging from ARS 500 to ARS 10,000,000), closure of establishments, forfeiture of goods, disqualification from holding office as public servants or from conducting commercial activities, registration suspension of federal suppliers, and loss of concessions, privileges, or tax or credit benefits. Furthermore, maximum prices were established for certain products during 2020 by Resolution No. 100/2020 issued by the Secretariat of Domestic Commerce, as a result of the economic and health crisis. These maximum prices are still in effect.

b) Emergency Executive Order on Commercial Loyalty

By virtue of the Executive Order on Commercial Loyalty No. 274/2019, acts of unfair competition are prohibited regardless of the form, means through which they are carried out and the market in which they take place. Under Emergency Executive Order No. 274/2019, unfair acts are acts of deception, confusion, violation of regulations, abuse of a situation of economic dependence, obtaining commercial advantages by improper means, sale of products below their actual value, among others.

The Secretariat of Domestic Commerce is authorized to impose sanctions to non-compliant subjects, such as warnings, fines (of up to AR$ 552,900,000), registration suspensions for federal suppliers, closure of establishments and loss of concessions, privileges, tax or credit benefits.

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Interactions with
the public sector

Under the Constitution of the Argentine Republic, Argentina has a representative, republican and federal form of government. Consequently, the Federal Government coexists with the government of the 23 provinces and the government of the Autonomous City of Buenos Aires, all of which integrate the country.

Accordingly, administrative law is a branch of law of local nature that governs the interactions between the public and private sector, which includes contracts entered with any level of government. In other words, government contracts are governed by the laws in effect in the jurisdiction where the contract was formed (which may be either provincial rules or rules of the City of Buenos Aires, or federal rules).

Each jurisdiction (the Federal Government, Provinces, the Autonomous City of Buenos Aires and municipalities) has the power to issue rules on government contracts. These rules must comply with the parameters set by the Constitution. Generally speaking, principles applicable to government contracts are similar among all these jurisdictions.

a) Public Procurement Procedures

Public procurement laws of the appropriate jurisdiction should be observed when a business intends to supply goods or services to the public sector.

At the federal level, Executive Order No. 1,023/2001 sets forth a Regime for Federal Government Contracts that is mandatorily applicable to all contracting processes in which bodies and entities comprising the Federal Public Sector participate.

This Regime applies to sales contracts, supply agreements, service agreements, lease agreements, agreements for the provision of consulting services, lease-purchase agreements, and license agreements for the use of public or private goods owned by the government. Furthermore, the Regime also applies to public works, concessions of public services and licenses.

The selection process for government contracts is governed by the principle of transparency that is realized by means of publicity and diffusion of all acts arising out of the application of the Regime.

Selection processes set forth by this law include the following: open or limited competitive bidding —there are two types, one in which only economic factors are considered, and another one where criteria that does not include economic factors is applied— and sole source procurement. Open competitive bidding is the preferred method, whereas the others —in particular, the sole source procurement— are the exception to the rule and there are certain requirements that must be met for them to be conducted.

The contract shall be awarded to the best bidder with the most suitable offer according to the procuring entity's needs, and aspects such as price, quality and fitness of the bidder, among others, shall be taken into account.

In addition, provisions under the Buy Argentine and Development of Suppliers Act No. 27,437 (2018) must also be borne in mind. This Act establishes that all legal persons named therein —bodies and entities from the Federal Public Sector, licensees, concessionaires and those awarded permits for the provision of public works and services and their direct contractors— must give preference to offers of domestic goods in awarding purchase agreements, lease agreements or lease-purchase agreements, provided however that the estimated value of the selection process exceeds ARS 3,000,000.

b) Public Works and Public Work Concessions

In the event companies seek to perform public works or become concessionaires to carry out public works, they must take into consideration specific laws effective in the corresponding jurisdiction.

Act No. 13,064 (1947) applies governs public works carried out by the Federal Government. The Act defines public works as "any construction or work or industrial services carried out by using the funds that comprise the Argentine Public Fund, excluding those carried out with government subsidies (…) and military works."

Public works contracts for the performance of federal public works shall only be awarded after the open competitive bidding process has been held, although there may be exceptions to this rule.

After the contract has been signed, the commencement and performance of the work shall be subjected to the bidding terms and conditions used as base for the competitive bidding process and the awarding of the contract.

Likewise, payment terms must be set forth in the bid's terms and conditions, which shall also determine the amount, integration and release of bid bonds.

c) Public-Private Partnerships

Public-Private Partnerships are agreements between bodies and entities of the federal public sector (acting as contracting party) and private or public entities (as contractor) in order to develop projects in the fields of infrastructure, housing, activities and services, investments in manufacturing, applied research and/or technological innovation. Act No. 27,328 (2016) governs Public-Private Partnerships (PPP).

PPPs may be entered into provided always that it has been previously determined that they are an appropriate procedure for achieving the intended goals that are of public interest.

Furthermore, PPPs must set forth provisions on the effective term of the agreement and the possibility to extend it, equitable sharing of profits and risks between the parties to the agreement, duties owed by the contracting party and the contractor according to the characteristics of the project, events that lead to termination, the cooperation powers of the contracting party with regard to obtaining the necessary financing for the execution of the project, among other provisions.

The contractor shall be selected by means of a open competitive bidding, which may be conducted at a national or international level, pursuant to the technical complexity of the project, to the opportunity of local companies to participate, to economic and financial aspects related to the characteristics of the project and where the funds originate from in the event of projects that have or require external financing.

d) Government Liability

The Government Liability Act No. 26,944 (2014) establishes the cases in which the Federal Government is liable for damages caused to property and violations of other rights by its acts or omissions to act.

Contractual liability of the public sector is governed by specific laws and, in the event no such laws exist, Act No. 26,944 is complementarily applied.

Liability can be incurred as a result of legitimate and illegitimate government acts alike. Legitimate acts occur when a special sacrifice is made and illegitimate acts arise out of “faute de service” or misconduct. However, the Government shall not be held liable for any damages caused by concessionaires or contractors of public services in the exercise of the powers vested in them to reach government goals provided that the act or omission is within the scope of such goal.

The Act invites the provinces and the City of Buenos Aires to adhere to its terms in order to unify the legislation on this matter at the national level. However, as a large part of the provinces has not adhered, local regulations applicable in each jurisdiction shall be attended.

e) Access to Public Information

Act No. 27,275 (2016) sets forth and guarantees the right to access public information. The Act promotes citizen participation and transparency of the public administration pursuant to principles such as the assumption of publicity, transparency, and the principle of maximum disclosure, among others.

Accordingly, the right to access public information includes searching, accessing, requesting, receiving, copying, analyzing, reprocessing, reusing and redistributing freely any piece of information of the public sector. Any individual or private or public business has the right to request and receive public information.

The request for information shall be filed before the appropriate body that has or allegedly has such information. This body shall forward the request to the person in charge of providing such public information. The request for information shall be answered within a term of 15 business days, which may be extended exceptionally with cause.

Executive Order No. 206/2017 is an implementing order regarding the Access to Public Information Act and it establishes that those persons or bodies obliged under the law must provide information gratuitously, except in specific cases.

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