2.0 Commercial Legislation

Joint Ventures. Argentine Corporate Law

By Estudio Lisdero Abogados

Partnerships

Corporations ("*Sociedades Anónimas", "S.A.*")
S.R.L. (*Sociedades de Responsabilidad Limitada – S.R.L.)*
Branches (*Sucursales*)

1. Any foreign company wishing to incorporate or participate in an Argentine partnership must previously be filed with the Public Commercial Registry ("RPC"), establish a domicile in Argentina, appoint a legal representative, filing documentation to prove some of its legal and economic characteristics and to prove that its activity does not run, directly or indirectly, mainly in Argentina; inform its owners, the owner of the owner, etc. up to a natural person (in some jurisdiction you must update this information every year) and get a fiscal identification number.

    a. Notice that if a holding company, off shore or not, has participation only in Argentine partnerships, must move its domicile to Argentina.

2. Any Argentine partnership

    a. May be fully (100%) owned by foreign companies or natural person.
    b. The Board must have the majority of the members domiciled in Argentina.
    c. They must have at least two members.
    d. Get a fiscal identification number and, if applies, get a Custom identification number.
    e. The members of the board must get a fiscal identification number.
    f. Notice that you can run de partnership not only trough the Board but with a net of power of attorneys.

3. Main characteristics of the S.A.

    a. Capital.
        i. Minimum of A$100,000 (circa US$ 6.000).
        ii. If it exceeds A$10,000,000 or when de object is for some particular activities (banks, insurance, listed companies, etc.) the Board must be at least formed by three persons.
    b. Shares:
        i. The propriety is settled in the books.
        ii. They have freely transmission; it is possible to establish some limitations.
        iii. They may have one to five votes.
        iv. If it is established some preference, they do not have vote.

v. You can establish many categories of shares with different rights, for example a certain number of members of the Board for each category, etc.

c. Shareholding Meetings.
   i. It may be called by the Board.
   ii. If it is unanimous, is not necessary to publish the calling but decisions must be taken unanimously by all the shareholders.
   iii. It may meet spontaneously.

d. Board of Directors:
   i. It may be formed by one or more permanent members and by equal, higher or lower number of substitute Directors (they substitute, on a temporary basis, cover the vacancy of permanent Directors).
      1. The appointment of substitute Directors is mandatory when the Statutory Auditors (syndics) are not appointed.
   ii. It must have meetings at least every tree months, also though videoconferences.
   iii. The members of the Board:
      1. May last one to three years.
      2. May be reelected.
      3. Must have a fiscal identification number.
      4. Must sign a PEP (Politically Exposed –public charge, Ambassadors, politician, etc.) declaration.
      5. Their charges are freely (no explanation required) revocable by de shareholding meeting.
   iv. Statutory Auditors (Syndics).
      1. In principle are not mandatory.
      2. In principle the number of syndics may be one permanent member and one substitute.
      3. Is mandatory to be formed by an odd number of members superior to two e.g. when the capital is more than A$10.000.000, for public companies, companies with State participation, or public utilities, saving, etc. and also for the companies controlling or controlled by them.
      4. All the members must be lawyers or accountants graduated in Argentina and domiciled in Argentina.
e. They must pay an annual tax to the RPC.
f. They must file to the RPC any new Board, new Statutory Auditors, new shareholding meetings, modification of the Article of Association, annual balance sheet.

4. <u>Main characteristics of the S.R.L. different to the S.A.</u>

a. Are usually for less structured projects.
b. Partners: no less than two, no more than 50.
   i. To modify the Article of Association is required the vote of at least two partners.
c. No minimum capital.
d. Shares.
   i. Not properly named shares but “cuotas”.
   ii. The propriety is settled in the PRC.

iii. Then, it is necessary to file in the PRC any transfer of property.
iv. Only one vote.
v. No preference.
vi. No categories.

e. For partners' decisions, is not mandatory a meeting: decisions may be sent by mail.
f. Board.
i. The office may have no limit.
ii. The appointment of substitute Directors is not mandatory also when the statutory auditors (syndics) are not appointed.
iii. Is not mandatory to the Board to meet every there month.
iv. No videoconference is allowed for the Board meetings.
g. Statutory Auditors are not mandatory except when the capital exceeds A$10.000.000.
h. The filing of the Balance Sheet with the RPC is not mandatory.
i. They must not pay annual tax to the PRC.

5. <u>One partner partnership</u>.
a. One partner partnership is allowed only in Sociedades Anónimas with the following characteristics.
i. The full capital must be paid in at the moment the corporation is incorporated.
ii. The name must be followed by "Sociedad Anónima Unipersonal" or "S.A.U.".

6. <u>Main characteristics of Branches of foreign companies.</u>

a. The Head Company is responsible for all debts and obligations undertaken by the Argentine Branch.
i. In some cases banks, for granting credits, take also into consideration the assets of the Head Company.
b. In principle, they do not require a minimum corporate capital, except for the banking or insurance and other particular activities.
c. It is required to hold accounting books separately from those of the Head Company.
d. It is required to file their Balance Sheet with the PRC.
e. It is not required to hold members meetings or any administrative committee meetings.

<u>Special taxation benefits for small and medium-sized enterprises</u>

7. Benefits:

a. Quarterly pay VAT (value added tax, now 21%).
i. Simplified procedures for exemptions.
ii. Delay in payments.
iii. Changes in the calculating system.
b. Incoming tax.
i. Increase in minimum amounts for its retention.
ii. Changes in the calculating system.
c. Increase of the minimum amounts for tax advances of national taxes.

d. Tax subsidies to debits and credit in bank's accounts.
e. Possibility to issue bonds.
f. Listing of promissory notes.

8. Notice that in the case of companies controlled by another, in order to be classified as a SMEs (PYMES), it will be considered the group's consolidated balance sheet.

2.1 Commercial Legislation

Anti-Trust Laws

Regulation against practices hindering freedom of the competition: antitrust act.

By Leonhardt & Dietl, y Abogados

The following is a brief description of the Antitrust regulations in force in Argentina. Although these regulations have a long history in Argentina, their effective application in a consistent manner begun about twelve years ago, once after the major public utilities companies' had been privatized and therefore, the government resolved that it was necessary to control the effect of certain conducts that could have a negative effect in the market and specifically in the costs that consumers had to pay for the services and goods they purchased.

The currently in force Antitrust Act (Nº 25156) was enacted on September 20, 1999. Such Act was amended by Decree 396/01 on April 1, 2001.

We will describe below the law in a general overview of the main aspects, and then offer you a brief analysis of the current status of its enforcement.

Forbidden Agreements And Practices

According to the Antitrust Act (the "Act"), those agreements related with the production and exchange of goods and services which purpose or effect is to limit, restrict or distort competition or the access to the market, or which constitute an abuse of dominant position in a market, thus harming the general economic interest, are forbidden. This is the general principle. Then, the Act details other forbidden practices, which are derivations of this principle. By way of example:

1. Establish, agree upon or directly or indirectly manipulate the purchase or sale price of goods or services offered or demanded in the market, and exchange information with the same purpose or effect.
2. Establish obligations to produce, process, distribute, purchase or trade only restricted or limited quantities of goods or services.

3. Distribute areas, markets, customers and supply mechanisms.

4. Coordinate positions in calls for bids or competitions.

5. Limit investments aimed at the production or trade of goods and services.

6. Prevent other parties from entering or staying in a market, or exclude other parties from a market.

7. Establish or impose, directly or indirectly, individually or in agreement with competitors, purchase or sale prices and terms for goods, services or production.

8. Subordinate the sale of goods or the provision of a service to the acquisition of other goods or to the use a given service.

9. Subject the purchase or sale to a condition such as not using, acquiring, selling or supplying goods or services produced, processed, distributed or marketed by another party.

10. Impose discriminatory conditions for the acquisition or disposal of goods or services not based in usual market practices.

11. Refuse to satisfy concrete purchase orders made under current market conditions, without a reasonable basis.

12. Dumping: sale goods or provide services at lower than cost prices without reasons grounded on market practices, with the purpose of displacing competitors or harming the suppliers´ image, assets or trademark values.

The above described acts will be penalized as follows:

a) The immediate cessation of forbidden acts or behaviors and, if pertinent, the removal of their effects.

b) Payment of fines, which may range from ten thousand pesos ($ 10,000) to one hundred and fifty million pesos ($ 150,000,000), to be determined on the basis of the loss incurred by all the persons affected by the forbidden activity, the benefit obtained by all the persons involved in the forbidden activity and the value of the involved assets of the persons that carried out the forbidden activity at the time the infraction took place. In case of recurrence, the amounts of the fine shall be twice as high. There are many examples of substantial fines having been imposed for acts contrary to the free competition.

c) The fine will also be jointly and severally applied to the directors, managers, administrators, statutory auditors or legal representatives of the company that committed the illegal act, who, through their actions or the omission of their control, supervision or surveillance duties, contributed, encouraged or allowed the infraction to be committed. In such case, a complementary penalty consisting in the prohibition to engage in any commercial business from one to ten years may also be applied.

Affected third parties may also file a claim for damages.

Dominant Position

The Act defines "Dominant Position" as the position enjoyed by one or more persons when they are the sole suppliers or consumers of a product or service within the local market or in one or several parts of the world, or when they are not exposed to substantial competition, or when, due to the extent of vertical or horizontal integration, they are in a position allowing them to determine the economic viability of a competitor or participant in the market, to the detriment of the latter.

Without prejudice to the penalties described above, when any acts constituting an abuse of dominant position are verified, the court may impose conditions aimed at neutralizing any distortion with regard to competition, or may apply to the competent judge for a decree ordering the dissolution, winding up, de-concentration or division of the infringing companies.

Affected third parties may also file a claim for damages.

Economic Concentrations

Economic concentrations aimed or having the effect of reducing, restricting and/or distorting competition, in case they harm the general economic interest, are also forbidden. The fact that the general economic interest has to be harmed is the main difference between the Argentine system and other systems such as the United States Hart-Scott-Rondino Act. The Argentine system is more similar to the European system.

To such effects, an economic concentration is any of the following cases:

1. Mergers between companies.
2. Goodwill transfers.
3. The acquisition of property or any right over shares or capital interests when such acquisition gives the purchaser control over, or a substantial influence on, the company acquired.
4. Any other agreement giving an individual or corporation a determining influence on the adoption of ordinary or extraordinary decisions in the management of a company.

Any such acts carried out between corporations or individuals whose aggregate total business exceeds two hundred million pesos ($ 200,000,000) in the country shall be previously notified, or notice thereof shall be submitted within a term of one week after the date of execution of the agreement or the date of acquisition of a controlling share, to the Antitrust Commission. However, even if the aggregate total business of the parties engaged in the transaction exceeds $ 200,000,000, the transaction need not be notified if the amount of the operation and the value of the assets located within Argentina that were absorbed, acquired, transferred or controlled do

not exceed, each of them respectively, the amount of $20,000,000, unless (i) transactions were made in the last 12 months prior to the operation whose aggregate amount exceeds $ 20,000,000 or (ii) transactions were made in the last 36 months prior to the operation whose aggregate amount exceeds $ 60,000,000, provided that, in each such case, the transactions were made in the same market.

The Antitrust Commission shall establish, in general terms, the information and background to be submitted to the Commission in order to analyze each transaction, to determine whether if the general economic interest is harmed.

Companies failing to comply with the above provision may be penalized with a fine of up to one million pesos ($ 100,000,000) per day as from the expiry of the obligation to notify or as from the non-compliance with the order to cease or refrain from carrying out the concentration. The fines detailed in the first clause shall also be applicable, if pertinent.

Affected third parties may also file a claim for damages.

Within 45 days after the submission of the respective application and documentation, the Commission shall issue a substantiated resolution stating whether:

a) it authorizes the operation,
b) it subjects the authorization to compliance with conditions established by the Commission itself, or
c) it refuses to authorize the operation.

If the mentioned 45-day term elapses without the Commission having issued any resolution, the operation shall be deemed to have been tacitly approved.

The acts constituting an economic concentration shall be effective between the parties or in respect to other parties only after the notice and the terms mentioned above have been complied with.

Enforcement Authority

The Act establishes the creation of a National Antitrust Commission which has not been organized yet. The Antitrust Commission is temporarily performing the duties of the Court. In addition to the task mentioned in the previous paragraph, the Commission has the following functions: holding hearings with responsible parties, accusers, affected parties, witnesses and experts; receive their testimony and order confrontations; carry out any necessary examinations on relevant books, documents or elements; impose the penalties provided for in the act; file

legal actions, inspect companies on the basis of court orders, apply to the courts for any precautionary measures deemed convenient, etc.

Complaints

Complaints involving infractions against the mentioned act can be filed by any individual or public or private corporation.

Complaints shall contain the name and address of the plaintiff and the accused party, accurately describing the object of the complaint and clearly explaining the substantiating facts.

If the court considers that the complaint is pertinent, it shall summon the accused party and invite it to provide the necessary explanations.

The Court´s decisions as regards evidence may not be appealed against. The Commission may also act ex officio.

Status Of The Act's Enforcement

During the first years of the application of the Act, the resolutions were very well funded and the Antitrust Commission had a strong group of professional analysts studying each case. Several of the most well known case precedents were resolved during this first stage. In the last years, the resolutions have a tendency to be more contemplative of certain political issues that had not been weighed in previous cases.

In any event, it has become clear in the last decade, that any business or investment that is carried out in Argentina has to analyze the impact of this regulation. Very substantive fines have been imposed in the past, and many very relevant mergers had to dispose of certain assets because of resolutions issued by this authority. Therefore, a detailed analysis of this regulation is a must-do in the agenda of any foreign investor.

Money Laundering

The objective of money laundering is to simulate the legality of assets originated in illegal activities. This method of delinquency has transnational characteristics and has been favoured by the rising economic integration and free capital flow. Consequently, all countries should join efforts in order to prevent and control money laundering.
In Argentina law 24.072 approved the Vienna Convention of 1988 on April 9, 1992, the purpose of which was to promote the cooperation between signatories for the trafficking of illegal drugs internationally. The countries agree to penalize the organization or the financing of illegal

trafficking, as well as the laundering of goods produced by this trafficking; that is the conversion or transference of goods proceeding from this criminal activity and the covering up of its origin.
Before ratifying the Vienna Convention, on September 21, 1989 the penal legislation on drugs was dealt with by law 23,737. The crime of money laundering proceeding from drug trafficking is typified in art. 25; art. 26 relates to the lifting of bank secrecy, to be ordered by the judge in charge of the case.
Law 25,246 passed in April 2000, modifies articles 277 through 279 of the Penal Code and its object is to prevent and punish the laundering of money. This law was regulated by Decrees N° 169/2001 and 1500/2001.

Financial Information Unit

Law N° 25,246 created the Financial Information Unit (FIU) responsible for the analysis, processing and transmission of information in order to prevent the laundering of assets deriving from:

• Crimes related to the traffic and illegal sale of drugs.
• Crimes resulting from the contraband of arms.
• Crimes related to the activities of an illicit association as defined in art 201 bis of the Penal code (military type organization, with arms, in different parts of the country that jeopardize the National Constitution).
• Illicit acts carried out by unlawful associations organized to commit crimes for political or racial reasons.
• Crimes resulting from fraud to the public administration.
• Crimes against the Public Administration.
• Crimes related to juvenile prostitution and childhood pornography.

The FIU´s responsibilities include the following:

• To receive, request and file information from those obliged to report “suspicious operations” (when they result to be unusual activities, without economic justification, or with unusual or unexpected difficulties).
• Direct the analysis of the abovementioned operations.
• Cooperate with judicial organisms.

Entities obliged to report

Those obliged to report suspicious operations are the following:

• Financial entities and AFJP (private pension funds).
• Entities subject to the provisions of Law 18,924, and those persons and entities authorized by the Central Bank to operate on the exchange market.
• Persons or entities that operate in gambling.
• Stock brokers, companies managing investment funds, agents intervening in the purchase, rental or loan of securities.
• Registered intermediaries in the markets of futures and options, regardless of their objective.

• Public Registers of Commerce, of Supervision of Companies, of Real Estate, of Automotives, and of Chattel Mortgages.
• Those involved in the trading of art works, antiques or other luxury items, stamps, coins, jewels and precious stones.
• Insurance companies and brokers.
• Issuers of travelers checks and operators of credit or debit cards.
• Transports in armoured trucks.
• Postal services that operate in money transfers and foreign exchange.
• Public Notaries.
• Savings and loan companies.
• Customs brokers.
• The Central Bank, AFIP (tax and customs services), National Securities Commission, Superintendence of Insurance and Companies Inspection Board.
• All professionals in Economic Sciences registered in their respective associations.
• Entities that receive donations or subscriptions from third parties.

The FIU has established the form, timing and other procedures related to the obligation of reporting suspicious transactions for each category of those obliged to report and also type of activity.

Unusual or Suspicious Transactions

The FIU has also approved for each category of those obliged and transactions´ type, guides detailing suspicious or unusual transactions; these guides are only for illustrative purposes.

Central Bank

The Central Bank has issued norms in matters relating to money laundering and financial institutions that cover the following issues:
• financial entities covered by these norms
• minimum standards to be observed by these entities
• designation of officials responsible for preventing money laundering transactions
• transactions covered by these norms
• safeguarding of information
• security copies
• transactions excluded
• information on suspicious transactions
• jurisdictions considered as non cooperative

Personal Data Protection

Law 25,326 of Personal Data Protection was sanctioned on October 4, 2000, in order to fully protect personal data registered in records, files, data banks or any other technical method of data treatment, public or private, with the purpose of issuing reports, in order to assure the right to the honour and privacy of persons, as well as to the access to information relating to them that is recorded in accordance with the provisions of the National Constitution; for this reason the National Directory of Personal Data Protection was created. This law is also applicable to data related to entities, but does not affect in any way data banks or the sources of journalistic information.

Personal data and data files

Personal data refers to any kind of information related to persons or entities while records, files or data banks refer to the organized collection of personal data that is subject to analysis or process.

Creation of data records is legal when they are properly registered, and may not have any purpose contrary to law or public morals. Data contents must be true, appropriate, relevant and non-excessive related to the field and purpose for which they were obtained; they can't be used for purposes different or incompatible with those that motivated their acquisition.

Data must be exact and updated if necessary. Those totally or partially inaccurate or incomplete must be deleted and replaced or completed. They should not be obtained through disloyal or fraudulent means. They must be stored in a way that allows the owner's right to access. When they are no longer necessary or relevant for the purpose they were obtained, they must be destroyed.

The owner of the personal data contained in the file must freely give consent, which must be written. Consent will not be necessary when:

a) Data is obtained from public sources with non restricted access;

b) Information is collected as a result of the exercise of State functions or as a result of a legal obligation;

c) When data lists are limited to name, national identity document number, social security or taxes identification, occupation, birth date and address;

d) When they result from a contractual, scientific, or professional relation of the data's owner, and they are necessary for its compliance or performance;

e) Operations carried out by financial entities and information received from their clients.

When personal data is collected, the owner must be previously informed of the purpose for which it will be used and who might be its users, as well as the identity and address of the party responsible for the file.

Sensitive data

There is another kind of data, “sensitive data”, referred to racial and ethnical origin, political opinions, religious, philosophic or moral ideas, union affiliation and information related to sexual life or health. No person can be forced to provide this kind of data that can only be collected and dealt with when general interest reasons are involved authorized by law; and used for a statistical or scientific purpose.
Data related to criminal records can only be used by competent public authorities. Personal data related to physical or mental health can only be collected and used by sanitary institutions, private or public, and health science professionals.

Safety and confidentiality of data

The party responsible for the data record must guarantee safety and confidentiality of the personal data. Registration of personal data in records, files or banks that do not offer the necessary technical conditions of safety and integrity is forbidden.
The responsible party and anyone that participates in any stage of the use of the personal data are obliged to keep professional secrecy about them; they can only be released from this obligation by judicial order or when public security, national defence or public health reasons are involved.
Personal data may only be ceded for the compliance of purposes directly related to legitimate interest of the ceding party and the cessionary, and with the previous consent of the data owner.
As far as international data transference is concerned, it is forbidden with countries that do not provide the adequate levels of protection.

Information and access right

Any person may request information from the control organism with relation to the existence of files, records, personal data banks, its purposes and the identity of the responsible parties. The register that this organism keeps is public and free.
Once the information has been requested, the responsible party must provide it within ten days of being officially notified. If the request is not properly answered before the period expires or the report is considered incomplete or insufficient, the action of protection of personal data will be expedited. The report must not, under any circumstance, reveal data belonging to a third party, even if they are related to the person in question.
Also, every person has the right to the correction, updating and when necessary deletion or being subjected to confidentiality, of his personal data, included in a data bank. The responsible party has a maximum period of five days as from when the claim is received from the owner. When this obligation is not complied with the interested party may call for the action of personal data protection or of habeas corpus.

Data bases

Every file, register, base or data bank, public or private, destined to the preparation of reports must be entered in the Register of data files. Every person that creates files, records or databases that is not exclusively for personal use must be registered.

Credit Information Services

Only personal data of a financial nature may be used. Also data related to the compliance or not of financial obligations. The only data that may be filed are those significant in order to evaluate the financial-economic solvency during the last five years, period that is reduced to two years when the debt is cancelled, a fact which should be recorded.

Right to Action Personal Data Protection: habeas data

The personal data protection action or habeas data will proceed with respect to those responsible and those users of public and private databases which provide information for the following purposes:

a) to acquire knowledge of personal data stored in files, records or data banks, private or public destined to the preparation of reports, and their purpose;

b) in cases where falsehood, inaccuracy or outdated data is suspected with regard to the information involved or the use of data that is banned.

Action can be carried out by the person affected, a guardian and direct line descendants or second in line descendants or by a legally authorized person. The personal date protection action can be carried out by entities. In those cases it should be presented by legal counsel or by legally authorized persons.

The abovementioned action will be carried out according to Law N° 25,326 through a summary proceeding which serves to guarantee constitutional rights. Those convicted can be fined or suspended, and can also be subject to the corresponding legal actions.

Environmental Legislation

The National Constitution, as modified in 1994, establishes that the national government must legislate on the minimum standards of environmental protection; and the provinces and the city of Buenos Aires must pass complementary legislation.

Despite this declaration the need to protect the environment is not strongly embedded in the conscience of people in our country. A cultural change is indispensable in order to develop a conscience that will make them protect, and have others protect, the environment. To reach this goal it is necessary that the education and the means of communication carry out a more significant task than the one performed today.

It is also necessary for the authorities to be stricter in its control and vigilance, and more effective in the prevention of environmental damages. Additionally, the courts must contribute with exemplary penalties.

Environmental law

Law 25,675 was issued in November 2002 and establishes the minimum requirements to obtain an adequate and sustainable management of the environment - preserve and protect biological diversity and implement sustainable growth.

This law mandates the preparation of environmental impact studies for projects or activities that may affect the environment; it also establishes the right of communities to know and be informed of government or private actions that may affect their environmental rights and establishes mechanisms for the education and participation of such communities.

It should be noted that it has established the obligation to contract environmental insurance policies for industrial and service activities. Finally, the law establishes a stringent and objective civil responsibility regime in relation to environmental damages.

Dangerous residues

Law 25,612 partially supersedes Law 24,051 but maintains the prohibition to import, introduce and transport into the country, its air space or seas any types of residue from other countries. The application authority should maintain a National Register of Generators and Operators of Dangerous Residues in which all persons or companies responsible for generating, transporting, treatment or final disposal of residues should be registered. So as to register, the following conditions must be observed:

• Generators: A sworn declaration must be filed stating their identity data, real and legal address, and the physical, chemical and biological characteristics of each residue they generate - the method and place of treatment, the estimated annual quantity of each residue, description of the processes and a listing of dangerous substances used, among other information.

• Transports: they must prove the address and identity of the company, the types of residue they will transport, vehicles and containers to be used; also, procedures to be used in case of an accident, and details of the insurance policy that will cover incurred damages.

• Treatment plants: they must file a sworn statement in which they detail identifying data, real and legal addresses, inscription in the Public Register of Real Estate Ownership, certificate of authorized industrial domicile, the plant's equipment, manuals of hygiene and safety, contingency plans, and description of procedures, among other information.

Once the requisites are complied with, the application authority will grant the Environmental Certificate, which is the document that proves in an exclusive manner the approval of the manipulation system, transport, treatment or final disposal, that those registered will apply to dangerous residues. This certificate must be renewed annually, and it is a necessary requisite

for the pertinent authority to be able to authorize the respective industry, transport, treatment plant or disposal, or other activities in general that generate or handle dangerous residues. All such operations must be documented in a “manifiesto” (manifesto).

The application authority sets the amount and payment’s timing of the rates to be paid by the generators, in relation to the dangerousness and quantity of residues produced. This rate cannot exceed 1% of the estimated average profit of the activity that generates the residues.

Every generator of dangerous residues is responsible, as owner of same, of all damages produced by them. This responsibility does not cease by their transformation, specification, development, evolution or treatment, except for those damages caused by the added danger that a certain residue may acquire as a result of deficient treatment carried out in treatment or final disposal plant.

Infractions to these regulations are subject to sanctions that range from a fine of AR$ 5000 to a suspension of the registration, which implies a ceasing of activities, in addition to the civil or criminal responsibilities that the transgressor may be charged with.

Urban solid residues

Law Nº 25,916 was passed on August 4, 2004 and establishes minimum requirements for environmental protection for the managing of all solid residues from cities whether these are of residential, urban, commercial, services, sanitary, industrial or institutional origin. This includes control of the collection, transport, treatment and final disposal. It promotes its recycling and recovery. With regard to major generators these are included in a special category under the regulation of special tariffs.

Environmental impact

Procedures to determine the Evaluation of Environmental Impact in the City of Buenos Aires are determined by Law 123, currently in force. In principle, all activities and undertakings carried out or projected, including extensions and modifications, that could produce an environmental impact, are covered by this regime.

For new undertakings and extensions a petition must be made to the application authority requesting the “category classification” of the projected work. Subsequently, if such category classification warrants it, a Technical Study of Environmental Impact must also be filed. The procedure is completed when a certificate of environmental aptitude is issued; this certificate is indispensable to obtain a construction or operating permit.

Mercosur framework agreement

Law Nº 25,841 passed on November 26, 2003 approves the Framework Agreement on Mercosur environmental issues, signed on June 22, 2001 in Asunción, Paraguay. The

Framework Agreement includes several commitments assumed by member countries aimed at promoting environmental protection.

Some of those commitments are very significant as they mean the establishment of interpretation rules related to the international trade of goods and services.

Among them, the following can be mentioned:

1. Member countries pledge to avoid the adoption of measures which may arbitrarily or unjustifiably restrict or distort -by alleging environmental protection reasons- the free circulation of goods or services within the Mercosur area.
2. Member countries shall foster the internalization of environmental costs through the use of economic and control instruments.
3. Member countries will try to coordinate their domestic environmental legislation, taking into account the different environmental, social and economic realities of Mercosur countries in order to establish fair conditions of economic competition.

Environmental information

Law Nº 25,831 was passed on November 26, 2003 and establishes the minimum standards for environmental protection in order to guarantee the right of access to environmental information, be it held by the Federal, Provincial, Municipal, City of Buenos Aires Governments, independent governmental entities or public utility companies, whether public, private or mixed.

Pursuant to the provisions of the law, access to environmental information shall be free of cost and available to both natural and legal persons. Moreover, no request for environmental information shall be denied unless trade or industrial secrets, intellectual property or the confidentiality of personal data could be affected or unless such environmental information refers to scientific research works which have not yet been published.

Water use

Law Nº 25,688 was passed on November 28, 2002 and establishes the minimum environmental standards for water preservation, water rights and rational use. This law establishes that water use is subject to the granting of authorization by the pertinent administrative authority.

PCBs

Law Nº 25,670 was passed on October 23, 2002 and establishes the minimum standards for environmental protection regarding PCBs, by means of:

a) The control of operations associated with PCBs
b) The decontamination or elimination of equipment containing PCBs
c) The elimination of used PCBs
d) The prohibition on entering PCBs into the country
e) The prohibition on the manufacturing and selling of PCBs

With the passing of this law, the installation of equipment containing PCBs, as well as the import and entry of PCB and equipment containing PCBs is prohibited in the entire nation's territory.
Any natural or legal person performing activities or rendering services which imply the use of PCBs shall take out an insurance against liabilities to third parties.
Before 2010, all equipment containing PCBs, whose owner would like to keep in operation, shall be decontaminated entirely at the owner's expense.

Trusts

Law 24,441, in effect as from January 1995 has given a new impetus to trusts in Argentina. Since then and up to 2001 when the convertibility regime was discontinued our capital markets made good use of this instrument, and put Argentina in a leading position in Latin America due to the diversity and number of operations carried out.
As from 2003, and as a consequence of the recuperation of the economy, companies have started to use this alternative again. It is important to highlight that through its history, and despite the economic crisis of 2001 and 2002, trusts have had a low noncompliance rate of less than 4 %, much lower than that corresponding to other companies issued financial instruments such as the "obligaciones negociables" (negotiable obligations or corporate bonds). After the crisis, the first trust's transactions were associated with the financing of exports, but quickly consumer financing (mainly the large retail distributors of household goods) and credit cards transactions reappeared and became predominant in this market.
During 2004 over 80 transactions related to public offerings were made, for more than USD 1,700 million and USD 37 million; the transactions in dollars were mainly related to the future cash flows on exports.
Institutional investors participate actively in these transactions, it is estimated that they represent approximately 80 % and the rest corresponds to the retail segment; the participation of the pension funds (AFJPs) is estimated at 35 %, mutual funds 25 % and insurance companies close to 20 %.
It is also estimated that approximately 52 % of the trusts are based on consumer credit, 17 % commercial credit, 12 % credit cards, 12 % mortgage loans, 2 % leasing contracts, 2 % cash flows from exports and the rest (3 %) to other types of assets.
During the first 9 months of this year more than 80 transactions were made, for over AR$ 2,700million, which represent an increase of over 200 % with respect to the same period of last year. For this year the estimate is for transactions to reach AR$ 4000 million and the challenge for the future is to continue growing and to diversify the type of assets underlying these transactions.

Subjects

Chapter 1 of Law 24,441 deals with both financial and non financial trusts. It states that there is a trust when a person (creator) conveys fiduciary ownership of property of certain goods to another (trustee), who makes the commitment to exercise it for the benefit of a beneficiary, and to transmit it at the completion of a period of time, or of a condition, to the creator, the beneficiary or the final recipient. The creator is the party that constitutes the trust, in other words, that transmits the fiduciary ownership of goods or rights to the trustee.

The trustee is the person or company that acquires the goods and makes the commitment to comply with the charges and with the destination determined by the creator in the contract or will. In all cases they must render a report to the beneficiary at least once a year. Unless otherwise stipulated, the trustee has the right to be reimbursed for expenses and to a fee; if the latter is not mentioned in the contract, it will be fixed by the judge. The contract may not liberate the trustee from the obligation of rendering a report, nor from fraud or fault committed personally or by a dependant, nor of the prohibition of acquiring fiduciary property.

The beneficiary is the person or entity, or even a non existent party but identified in the contract, in whose benefit the trust was constituted, whether the benefits are received during the administration of the trust, or as the final recipient of the fiduciary properties.

Final recipient: it is possible that the final recipient is a different party than the one that has benefited from the administration of the trust during the life of the trust; in this case a distinction may be made between the beneficiary and the final recipient. The former receives the benefits during the life of the trust, and the latter at the end of it.

The contract

The contract must include:

• The identification of the goods subject to the contract (both material and immaterial).

• The definition of the manner in which other goods may be incorporated to the contract.

• The term of duration or condition that the trust ownership is subject to; it may not last longer than 30 years, except when the beneficiary is incapacitated.

• The final destination of the goods at the end of the trust.

• The rights and obligations of the trustee, and the manner of substitution in case of cessation.

Effects of the trust

A fiduciary ownership is created as to the properties put in trust; these constitute a separate patrimony from both the patrimony of the creator and of the trustee. They are also exempt from the individual or collective claims of creditors of the trustee.

The creditors of the creator may not file claims either to the properties in trust, except in the case of fraud or wrongful act. On the other hand, the creditors of the beneficiary may claim against the proceeds of the goods in trust, and subrogate the beneficiary in the beneficiary's rights.

The properties of the trustee shall not be used to cover liabilities incurred in fulfillment of the trust, which can only be cancelled with the properties put in trust. If these were not sufficient to cover such liabilities, it would not imply the trustee's bankruptcy. In such a case, liquidation shall take place to be carried out by the trustee.

The trustee may dispose of or mortgage the goods in trust when considered necessary to comply with the objectives of the trust, without the authorization of the creator or of the beneficiary. The trustee is also entitled to perform all acts necessary to protect the properties in trust from third parties, as well as from the beneficiary.

Financial trust

It is the trust contract as defined by the above rules, when the trustee is a financial institution or a company specially authorized by the National Securities Commission to act as a financial trustee, and the beneficiaries are the title holders of participation certificates in the trust's estate or of representative instruments of a debt guaranteed by the properties transferred. The participation certificates and the debt instruments shall be considered securities and may be placed for public offer. The National Securities Commission is the application authority with respect to financial trusts.

In the Argentine capital market, the main purpose of financial trusts is to become the financing vehicle for:

1. Companies with a high potential of long term sales without the necessary capital to finance the operation;
2. Companies with working capital financing needs that fulfill them through commercial paper factoring;
3. Potential exporting companies with financing needs for their operations;
4. Financing of investment projects, like real estate and agribusiness

- Lower financial costs
- Large volume of business
- Better financing plans
- Lower risks
- Better access to financing
- Gain-on-sale
- Better disposition of tax charges
- Off balance sheet finding

Conclusions

The trust has become a new way of investment with higher returns based on assets which provide interesting margins, and also allowing the investors to avoid originator companies' risks. Besides, there are other positive factors, such as Financial Trust with exports as collateral, that

offer the chance of getting hard currency returns, or certain Financial Trusts and certain investors' possibility to obtain Income Tax exempt returns.

2.2 Commercial Legislation

Capital Markets Transparency Regime

By Ignacio M. Sammartino, JP O´Farrell Abogados

Introduction

Corporate governance and directors' duties are mainly regulated by the Companies Act No. 19550 (ACA). The principles and provisions of the Act apply, in general, to both private and public companies. Besides the ACA, other statutory regulations are:

- Resolutions issued by the Superintendence of Corporations (*Inspección General de Justicia*"*IGJ*"), which apply to private companies incorporated in the Autonomous City of Buenos Aires.
- Capital Markets Law, which applies to public companies.
- Regulations issued by the National Securities Commission (*Comisión Nacional de Valores* "*CNV*"), which apply to public companies.
- Stock Exchange regulations, which apply to listed companies.
- The articles of incorporation of each entity.
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New Capital Markets Law

On December 28, 2012, the Argentine Government enacted National Act Nº 26.831 (the "Capital Markets Law"). This new law adopted many regulations issued by former laws, decrees and resolutions on the matter and also introduced several changes.
The Capital Markets Law, like former regulations, intends to prompt the development of the Argentine capital markets by establishing a more sophisticated legal framework for the protection of investors based on greater transparency.

Scope of application

All persons and companies participating in the public offer and self-regulatory organizations are subject to the Capital Markets Law.
The Capital Markets Law considers as public offer any invitation made to persons in general, sectors or determined groups to carry out any legal transaction with securities, performed either by issuers, sole proprietorship organizations or companies dedicated in an exclusive or partial

way to trading securities. Such invitation may be publicized by means of personal offers, newspaper publications, radio, telephone or television, placing posters or signs, schedules, printed brochures or any other means of distribution.

Before the Capital Markets Law was enacted, the National Securities Commission had already regulated many of the areas currently covered by said decree (e.g. disclosure obligations, insider trading, misuse of information, etc.) In some cases, the Capital Markets Law amended these regulations and in some others created new obligations.

Disclosure Obligations

In general, public companies must disclose immediately to the market any event or situation that, due to its importance, may substantially affect the placement or negotiation of securities or the company's regular business. The Capital Markets Law provides that public companies must appoint a person in charge of "Market Relations," who will carry out communication and disclosure of such information.

All underwriters and broker-dealers authorized to deal within the scope of application of public offers must immediately inform the National Securities Commission of every event or unusual situation that could materially affect the performance of their trading, their liability or investors' decisions to keep their accounts open with them.

Every person subject of an investigation proceeding must provide the National Securities Commission with all information required.

Insider Trading

The Capital Markets Law considers "insider" every person who, due to his/her occupation or activity, has information regarding an event not yet disclosed and that, due to its importance, may affect the current placement or negotiation of securities with authorized public offer or with term, futures or options contracts.

The main duty of insiders is to keep the information in strict confidentiality and abstain from dealing until such information is publicly disclosed.

This duty is extended to those persons who, for a temporary or accidental relationship with the company or with the persons falling within the provision, could have gained access to such information and, also, to third parties or subordinated persons who, by the nature of their occupation, could have gained access to such information.

Persons participating in the securities placement process will only be allowed to acquire or offer to buy such securities in those cases established by the National Securities Commission.

Misuse of information

Insiders may not use undisclosed information with the purpose of obtaining for themselves or for others, benefits of any kind, whether they derive from the acquisition or sale of securities or any other operation related to the public offer scheme.

Issuers, underwriters, broker-dealers, investors and any other intervening or participating person in the securities or term, futures or options markets, must abstain from carrying out, in initial public offerings or secondary offers, transactions or misusing information that seek to or allow the manipulation of prices or number of securities or term, futures and options contracts traded, altering the normal development of supply and demand. Moreover, such persons must abstain from misleading practices or transactions that may defraud public investors, by the use of devices, false or inaccurate statements, or in which material facts are omitted, as well as by any means of practice or action that could have misleading and prejudicial effects over public investors.

All issuers, members of its board of directors and its internal auditors board, as well as the persons who subscribed any prospectus for public offering of securities, will be liable for the information contained in such prospectus.

Duty of Loyalty and Care

In general, directors, officers and internal auditors of public companies must act with loyalty and care. Mainly, the duty of loyalty compels these persons to act in a way that the interests of the company as well as the interest of all its shareholders prevail over any other opposing interest, including the interest of the controlling shareholders. It also includes the abstention from obtaining any benefit from the issuer other than the compensation for his/her performance.

The duty of care compels such persons to act with the diligence of the “good businessman” standard in the preparation and disclosure of information to the market and to monitor the independence of external auditors.

The burden of the proof, in case of doubt, bears on the directors.

External Auditors and Audit Committee

The annual shareholders’ meeting of public companies is required to appoint independent certified public accountants who will carry out the external audit of the company. Such accountants must previously submit a sworn statement informing of any criminal, administrative or professional penalty imposed on them. External auditors must register with the National Securities Commission which shall make such registry publicly available on line.

Individual external auditors or their firms are required to put in place a system for quality control that allows them to verify whether (i) their members and staff comply with the relevant legal and professional rules and regulations, and (ii) their reports meet the legal requirements to protect investors.

In general, public companies must also form an audit committee of at least three members of the board of directors and the majority of which must be independent, in accordance with the criteria determined by the National Securities Commission.

The audit committee reviews the external auditors' designation as well as monitors their independence. It also supervises the functioning of the internal control systems and the accounting-management system, as well as the reliability of such systems and of the financial information or other significant events filed with the National Securities Commission in accordance with the informational scheme. Among other tasks, the committee has to disclose to the market complete information regarding those operations in which there existed a conflict of interests with members of the corporate bodies or controlling shareholders. Moreover, it reviews the fulfillment of the legal requirements and the reasonableness of the issuance conditions of shares or of securities' convertible into shares, in case of issuance with exclusion or limitation of preemptive rights. It also verifies the fulfillment of the applicable corporate governance rules and reviews transactions with related parties.

The audit committee prepares an annual acting plan that submits to the board of directors and the internal auditors board (*comisión fiscalizadora*). Every member of the board of directors and of internal auditors, as well as officers and external auditors must attend to its meetings and provide access to all the information they have, as requested by the audit committee. The committee has access to all the information and documentation that it deems necessary for the performance of its duties.

Disclosure requirements

The name, number, price and offering date of securities to be offered in an authorized market, as well as the identity of the broker-dealers of such market who had participated in the operation, must be made available to the general public as from the moment they are carried out.

The advertisement made by the issuing company, self-regulatory organizations, broker-dealers and any other person or entity participating in the securities placement process may not contain any information that may lead to mistake or any other confusion on the public regarding the nature, price, profitability, rescue, liquidity, guarantee or any other characteristic of the securities, their issuers, their respective term, futures or options contracts or the offered services.

These provisions are applicable to every form of advertisement with the exception of editorials, pieces of news, articles or any other journalistic collaboration.

Tender offers

Every tender offer for shares with voting rights issued by a public company must be extended to every shareholder, according to the proceedings established from time to time by the National Securities Commission.

Such proceedings must guarantee the equality of treatment between the shareholders, as well as provide a reasonable and adequate term for the shareholders to decide whether to accept or not the offer. The proceedings must also guarantee the obligation of providing investors with detailed information that allows them to make their decision with complete knowledge and must establish the terms in which the offer will be irrevocable, or if it will be subject to conditions and, in certain provided cases, the necessary guarantees. The proceedings must also establish the rules regarding the duties of the board of directors of giving its opinion on the offer and the price offered, as well as the scheme for possible competing offers. The Commission also establishes the rules regarding the information to be included in the prospectus and the registration form, the advertisement of the offer and the documents issued in connection therewith.

Those who, with the purpose of gaining control of a publicly held company, seek to acquire a certain number of shares that could give place to a "significant stake" (as this term is defined in applicable regulations), must previously carry out a mandatory public tender offer in accordance with the proceedings established by the National Securities Commission. Such offer will be addressed to every shareholder and for the stakes established by the Commission, which will determine the obligation to launch total or partial mandatory offers differentiated according to the percentage of the social capital figure and the votes sought.

This provision will not be applicable to those cases in which the significant stake does not imply the acquisition of control of the company.

Minority shareholders rights

Whenever a listed company falls under "almost complete control" of a shareholder, any minority shareholder will be able to, at any time, request the controlling shareholder to make a tender offer for the entire minority stake. Also, within the six following months from the date in which a person or entity acquired a stake which gives "almost complete control", such person or entity may issue a unilateral statement of will to acquire the remaining outstanding shares from minority shareholders. In these cases, minority shareholders are forced to sell their shares ("squeezed out"). "Almost whole control" status is defined as the holding of 95% or more of the issued capital. The Capital Markets Law provides the proceedings that must be followed in these cases.

Public offer withdrawal (delisting)

Whenever a company under the public offer scheme voluntary requires withdrawal from such scheme, it will have to follow the proceedings established by the National Securities Commission. It will also have to mandatorily launch a tender offer for its shares, warrants, securities convertible into shares or trading stock options.

Such offer will not need to be made to those shareholders who voted in favor of the withdrawal at the shareholders meeting. The offered price will have to be "equitable" and will have to, at least, equal the average price during the immediately preceding semester to the withdrawal resolution. Even though the National Securities Commission can challenge the price for being inequitable, the lack of objection does not preclude the right of shareholders to contest the offered price at a court of law or by arbitration.

Transactions with Related Parties

The Capital Markets Law considers related parties the i) directors, members of the internal auditors board and officers; ii) controlling shareholders or shareholders with a significant stake, either in the issuer's capital or its controlling parent's; iii) a company under the control of the same controlling company; iv) ascendants, descendants, spouses or siblings of any of the persons mentioned in i) and ii); v) companies in which any of the mentioned persons or companies own, directly or indirectly, significant stakes.

Whenever a public company executes contracts or carries out transactions with a related party, which involved a "relevant amount", such company must follow the proceedings established in the Capital Markets Law. An amount will be considered relevant if over 1% of the net assets of the company, and exceeding the equivalent to ARS 300,000.

The Audit Committee may be required to issue an opinion regarding the whether the transaction incorporated normal market conditions. This opinion may be alternatively issued by two independent firms. The vote of each director must be specified in the minutes of the board of directors meeting and, if approved, such contract must be immediately informed to the National Securities Commission.

In case the Audit Committee or one of the independent firms had given a negative opinion, the transaction must be submitted to the shareholders meeting for its approval.

In case a lawsuit is filed by a shareholder for damages, the defendant will have to prove that the transaction was made under fair market conditions or caused no damage to the company. This shifting of the burden of proof will not operate when the board had approved the contract with the positive opinion of the Audit Committee or the independent firms, or when the shareholders meeting had approved the contract without the decisive vote of the related party or interested shareholder.

Disclosure of Stakes

On a monthly basis, directors, officers, internal auditors (acting or alternate) and controlling stockholders are required to inform the National Securities Commission about their debt or equity securities holdings in the issuer (by themselves or beneficially for others), irrespective of the number of securities.

If a person or entity concludes a deal that would take its stake across a 5% threshold voting power, and thereafter a 5% multiple threshold (10%, 15%, etc.), a duty to promptly inform the National Securities Commission arises. Such duty is effective up to the point this stake amounts to a controlling stake.

The forms for complying with the duty to inform a stake as described above, are filled in and filed on line.

Corporate Governance Code

The National Securities Commission issued resolution 606/12 (replacing 516/2007) imposing public companies the obligation to consider if they adopt, totally, partially or do not adopt at all, certain regulations to be included in a Corporate Governance Code.

The resolution's main purpose is to have public companies more regulated on areas where no obligation to innovate exists, and it is expected to have a positive impact on transparency for shareholders. Examples of the areas covered by the resolution are: Policies in connection with controlling shareholders; Approval by the board of certain policies related to investments and finance, risks control, corporate governance, and training programs for directors and executive officers, etc.; Proportion of independent directors in the board; Dividends Policy and Meetings with minority shareholders.