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Seven years on from the enactment of emergency regulations

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During the economic crisis of 2001-2002, the enactment of emergency regulations and the devaluation of the peso (Law 25.561) Argentina established, among other matters, an exchange control regime. This regime is still applicable with some amendments. Additional regulations have been put in place regarding the incorporation of an Argentinean company by a foreign company, the transparency regime and tax matters.

Foreign-exchange control

Argentina established a foreign-exchange control according to which all foreign-exchange transactions (as well as the transfer of funds performed into and out of Argentina) had to be authorised by the Argentinean Central Bank (BCRA) in order to avoid sanctions, which included fines, operating suspensions and, in certain cases, imprisonment.

For transfers into Argentina, the BCRA regime established that following transaction approval and registration there would be a 365-day restriction for remitting abroad said registered funds and, with certain exceptions (and this still stands) established the mandatory constitution of a non-transferable, unremunerated local deposit, to be denominated in US dollars for a fixed term of 365 days equal to 30% of the transferred amount.

Nevertheless, BCRA has regulated exceptions to the 30% withholding, such as transfers executed as foreign direct investment (among other things, capital contributions in local companies or the acquisition of certain local asset).

Moreover, the BCRA regime states that certain transfers of funds abroad are not challenged, such as profits, dividends or services (royalties, insurance, freight, or technical assistance). Loan repayments, however, must be reg-

istered and approved by the BCRA and comply with specific rules and conditions, such as the maturity date, the repayment schedule, and the scope, nature and purpose of the loan.

Finally, it should be noted that the general rule is that remittances abroad shall be authorized by the BCRA, in particular, regarding: (i) final liquidation of direct investment in Argentina; (ii) capital reduction; and (iii) reimbursement of non-capitalised irrevocable capital contributions by local companies.

Incorporation of Argentinean companies by foreign companies

The Argentine Company Law (LSC) has specific provisions *vis-à-vis* foreign companies when acting in Argentina. In addition, the Public Registrar of Commerce of the City of Buenos Aires (IGJ) has, since 2003, issued several General Resolutions in an effort to prevent money laundering and tax evasion structures through the use of offshore companies.

It should be mentioned that foreign companies can invest in Argentina by resolving to install a subsidiary (as a shareholder), branch, seat or other kind of permanent representation (LSC Article 118 and 123). In this case and according to IGJ GR 7/03 (amended by IGJ GR 7/05), foreign companies acting in Argentina will have to be registered with IGJ and to designate a legal representative which will respond on behalf of the Company.

To obtain its registration, the foreign company must demonstrate "substantial" assets and operations in its place of incorporation or outside Argentina. Alternatively, it could meet the requirements by asking its parent company to prove assets and operations outside Argentina, in which case, additional certificates from both the parent company and the intermediate vehicle are also required.

Finally, even if IGJ GR 12/05 stipulates that foreign companies with profitable and internationally known businesses abroad may be exempt from asset and operations filings, in reality such criterion is not easily accepted.

Transparency regime

On June 1 2001, the Argentine government enacted Decree 677/01, as ruled and amended by the current regulations of the Argentine Securities Commission (CNV), which establishes several changes to public companies' legal framework.

The Decree has established rules relating to, among others: (i) the avoidance of illegal practices (market manipulation and fraud) by the implementation of summary investigations and administrative sanctions; (ii) the incorporation of a Mandatory Public Offering Regime of Acquisition (OPA); (iii) the mandatory incorporation of an audit committee which will have, among other things, the duty to prevent possible conflict of interests, internal control of accounting statements, and risk management; and (iv) the election of independent directors.

In the framework of corporate governance rules, the CNV has issued new regulations regarding the duties of board members (GR 516/2007) and introduced guidelines including reports and information to be produced and delivered by the board of directors on an annual and trimester basis.

Tax issues

Among several tax regulation amendments, we shall briefly point out the personal asset tax and the transfer pricing policy.

In general terms, the personal assets tax establishes that foreign shareholders of local corporations are subject to a 0.5 % tax over the value of their stock participation in the local corporation. Nevertheless some double-taxation treaties have provided for the exemption from said tax.

As regards transfer pricing regulations, it must be noted that Argentinean law generally meets the guidelines defined by the OECD in the Transfer Pricing Guidelines for Multinational Enterprise and Tax Administrations Agreements; being the difference that Federal Tax Authority is very keen *vis-à-vis* the application and compliance of such regulations.

As a conclusion, it could be stated that even if Argentina is in a good economic situation, there still are some restrictive regulations which have been, nevertheless, enacted within the framework of a globalisation that is positively impacting Argentina, in particular, at the level of corporate governance and taxes.

Banking and finance

Recommended firms
Tier 1
Bruchou Fernández Madero & Lombardi Marval O'Farrell & Mairal
Tier 2
Errecondo Salaverri Dellatorre González & Burgio Pérez Alati Grondona Benites Arntsen & Martínez de Hoz Jr
Tier 3
Allende & Brea Cabanelas Etchebarne Kelly & Dell'Oro Maini Estudio Beccar Varela Estudio O'Farrell Hope Duggan & Silva Nicholson & Cano
Tier 4
Baker & McKenzie Brons & Salas Cárdenas Di Cío Romero Tarsitano & Lucero M&M Bomchil

Mergers and acquisitions

Recommended firms
Tier 1
Marval O'Farrell & Mairal Pérez Alati Grondona Benites Arntsen & Martínez de Hoz Jr
Tier 2
Bruchou Fernández Madero & Lombardi Errecondo Salaverri Dellatorre González & Burgio Estudio Beccar Varela
Tier 3
Allende & Brea Estudio O'Farrell M&M Bomchil
Tier 4
Baker & McKenzie Brons & Salas Estudio Garrido Hope Duggan & Silva Mitrani Caballero Rosso Alba Francia Ojam & Ruiz Moreno Negri & Teijeiro Nicholson & Cano

Since her election in 2007, President Kirchner has made few friends among Argentina's business leaders and the attorneys who represent them. "She is trying to imitate Chavez or even Correa," one lawyer says. This opinion was echoed by the populace in June's parliamentary elections, which saw the ruling party lose 21 seats.

The effects of the global crisis in Argentina were overshadowed by Kirchner's nationalisation of the pension funds at the end of 2008. The ten private funds, or AFJPs (*Administradoras de Fondos de Jubilaciones y Pensiones*), were managed by a variety of local and foreign banks, insurance agencies and asset management companies, including HSBC, MetLife and ING. Under the newly-created national pension fund operator Anses, the government took control of \$30 billion in pension investments and became a shareholder in nearly every large company in Argentina.

The effect was immediate: within two days of the government announcing its intentions, the Buenos Aires stock-exchange index fell 24%. The news sparked a fire sale on the Brazilian Bovespa, where the pensions had to liquidate some \$535 million in investments prior to the transfer.

But the market drop created opportunities for bargain hunters, and some companies chose to repurchase their bonds while prices were low. Argentina's leading gas transporter Transportadora de Gas del Sur repurchased nearly 20% of its outstanding \$500 million in

bonds. Other companies involved in debt buyback programmes include Pampa Energía, Cresud, Banco Patagonia and Molinos.

The nation's 2001 default continues to affect the economy with lawsuits that are effectively blocking access to international loans. A move last April by Anses to repatriate some \$220 million in foreign AJFP investments did not escape the watchful eye of bondholders seeking compensation dating back to the 2001 Argentinean debt default. Many saw the move as a way for the government to bypass obligations made in a 2005 debt swap that is still \$30 billion overdue. The administration is in the process of repatriating foreign investments made by the private pension fund administrators, estimated at \$400 million.

Whether the economy rebounds or worsens in 2010, Argentine lawyers will be kept busy - though the question is, will they be structuring new financing deals or restructuring old debts? As one lawyer said, "This is the good thing about being a lawyer - whether the economy is good or bad, you always have work."

Marval O'Farrell & Mairal

With the largest team of lawyers in Argentina, Marval is an undisputed leading presence in all of Argentina's financial markets. But size isn't everything, and the ability of a firm to maintain communications properly between its practice groups and clients is critical for success, something Marval is known for. As one client says: "Their structure is very solid and they provide answers in real time, which is very important."

The firm is well regarded for its M&A work, and competitors praise partner Santiago Carregal for being a terrific corporate lawyer. Carregal and Juan Manuel Diehl led a team in November 2008 that represented Telecom Argentina in the purchase of IT centre Cubecorp from Optiglobe, a data management company, for \$35 million.

In the banking market Marval represents ABN Amro, Barclays and a host of local and regional banks in their Argentine matters. In 2008, Marval advised Banco Supervielle in several securitisation transactions, including the sale and simultaneous leaseback of its branch locations in the form of a trust that raised \$14 million.

Since 2005 the firm has been involved in restructuring the \$220 million debt of energy company Ciesa, which holds a controlling interest in Transportadora Gas del Sur, Argentina's main gas transporting company. The debt programme hit a snag late in 2008 when a previous restructuring agreement was terminated by Ashmore subsidiary and Ciesa

shareholder, AEI. In January 2009 AEI attempted to force Ciesa into bankruptcy court. The case will keep Marval's lawyers busy for the foreseeable future.

Leading lawyers

Ricardo Walter Beller
Santiago Carregal
Juan Antonio Gallo
Gabriel Matarasso
Roberto E Silva Jr

Bruchou Fernández Madero & Lombardi

Banking and finance has been the core practice area for Bruchou since the firm's infancy, and it is within the banking community that Bruchou possesses an international reputation. In the words of one competitor: "They are a franchise in terms of financial institutions."

With longstanding clients like Credit Suisse, Deutsche Bank and JPMorgan Chase, the firm has nurtured strong relations with some of the world's most active banks, as well as the nation's governing bodies. In the words of a lawyer at a rival firm: "They have very good connections in all the regulatory boards in Argentina."

As foreign financing has all but dried up in the past year, the firm has been active with local banks in some of the country's most recent deals. Bruchou counselled Banco de la Provincia de Córdoba as arrangers and collateral trustees of a \$300 million loan to electricity distributor Empresa Provincial de Energía de Córdoba. The loan, financed by the newly-created government pension administrator Anses, is considered the first energy infrastructure project to be funded under the new system.

"On the capital markets side they have some of the best clients in Argentina, and that has to be appreciated," says one competitor. The firm advised finance institution Nación Fideicomisos in arranging a novel trust debt offer on the Argentinean market, which raised approximately \$395 million. The offer, to be used to finance a federal plan for road development, is unusual in that the underlying asset is built on future revenue from a diesel oil tax.

Leading lawyers

Siro Pablo Astolfi
Enrique Bruchou
Hugo Nicolás Bruzone
Roberto Lizondo
Carlos Lombardi

Pérez Alati Grondona Benites Arntsen & Martínez de Hoz Jr

A leading presence in the corporate market, Pérez Alati has an impressive list of clients that includes some of the world's biggest energy clients, including Duke, Exxon Mobil and Shell. But it is the firm's regional clients that are expected to be of most help through Argentina's lean times. As one competitor notes: "They represent very important Chilean clients that have been very active in the last decade."

Early last year Alan Arntsen represented Brazilian company Lupatech in the total acquisition of Argentina's Norpatagónica. Both companies provide materials for the oil and gas industry.

Diego Serrano Redonnet is one of several Pérez Alati partners that receive praise for their work on financial matters: "When I talk to clients, he is highly regarded in the banking sector," says one competitor.

However some of the firm's largest recent transactions have been in capital markets. In 2008 the firm was local advisor to Banco Santander in the Spanish bank's \$9.28 billion global rights issuance - the seventh-largest transaction of its kind and the only equity offering in the Argentinean market since the economic crisis began.

The firm also advised the bank's local operation, Banco Santander Rio, as placement agents in the issuance of \$70 million in short-term notes for cement producer Juan Minetti in January 2009, 57% of which were bought by Anses. The deal is considered the first capital venture undertaken by the nationalised pension system.

Leading lawyers

Mariano Florencio Grondona
José Alfredo Martínez de Hoz Jr
Jorge Luis Pérez Alati
Diego Serrano Redonnet

Errecondo Salaverri Dellatorre González & Burgio

While the firm is known among competitors for its focus on financial transactions, Errecondo partners have important corporate clients to draw on in such times of fiscal crisis. One client in particular, Pampa Energy president Marcello Mindlin, is the envy of rival attorneys. "He is a guy who trusts Diego Salaverri very much," says one lawyer.

In September 2008 the firm advised Pampa Energy, which recently changed its name from Pampa Holdings, in the issuance of bonds worth \$178 million and syndicated credit financing of \$80 million for a capacity expansion project at the Loma de la Lata thermal power plant in Neuquén province.

That same September, the firm sat on the lender's side of the table for a project finance deal, advising on Credit Suisse's facility for Envases del Plata's expansion of their aluminium aerosol can production operations in Argentina and their start-up in Mexico.

In 2008 the firm advised Santander and HSBC on the issuance of \$150 million in series 2 notes by Gas Natural Ban, and acted for BBVA Banco Francés on the issuance of \$100 million in series 5 notes by Rombo Compañía Financiera.

Leading lawyers

Santiago Enrique Dellatorre
Javier Errecondo
Facundo Goslino
Diego Martín Salaverri

Estudio Beccar Varela

In the words of a competitor: "Beccar Varela is where the best lawyers started." Indeed, many senior partners at rival firms began their careers at the 112-year-old institution, a fact that speaks of the firm's ability to create rain-makers, as well as their inability to keep talent.

Competitors point in particular to partner Roberto Crouzel as the fire in Beccar's furnace, driving many of the major banking deals in recent years. "He is the only one our prospective clients speak of at Beccar," one rival notes.

Beccar has a longstanding tradition in the banking market, with a representative client list that includes Banco Galicia, Santander and Banco Itaú. The firm also handles the day-to-day work of Citibank in Argentina.

In 2008 and 2009 Beccar's banking team was involved in several large M&A deals, representing local entity Banco Comafi's purchase of consumer finance unit Provencred from Citi affiliate Diners club. Additionally, Beccar's banking team advised Galicia on its 80% acquisition of AIG's consumer finance units. The transactions are characteristic of the retreat of international players from Argentina's financial market.

In the telecoms sector, Emilio Beccar Varela advised DirecTV in its assumption of a minority stake in local sports network Torneos y Competencias, which holds an important monopoly on the rights to broadcast FIFA events in Argentina.

Leading lawyers

Damián Fernando Beccar Varela
Pedro Castro Nevares
Roberto Horacio Crouzel

Allende & Brea

As one of the country's oldest firms, Allende benefits from a traditional presence in Argentina's corporate and financial market. Some important long-time clients include Bank of America, Standard Chartered Bank and Mastercard International. Nonetheless, competitors view Allende as suffering from the proliferation of law firms in Argentina.

Allende's practice is considered full service - in the words of one lawyer: "They do everything."

In a rare example of cross-border private financing for medium-sized operations in Argentina, the firm represented Société Générale in several financing programs for two local bus companies - Andesmar and Transportes Automotor Plaza. The loans will be used to purchase new Volvo busses for each of the companies' growing fleets.

In the capital markets, the firm recently completed work on Nuevo Banco Industrial de Azul's public offering for \$90 million. The deal affirms the growing strength of local banks in Argentina's public market.

Leading lawyers

Diego Botana
Pablo G Louge
Carlos María Melhem

Estudio O'Farrell

The oldest firm in Argentina, O'Farrell is approaching its 125th anniversary in Argentina's legal market. Though traditionally known for its work in capital markets, competitors note the firm's recent presence in M&A transactions and its significant background in the energy industry. As one rival states: "They know a lot about the legal framework of the energy sector."

Last year Rafael Salaberren represented Pampa Energy on the sale of its share of the Inversora Ingentis power project to Emgasud, which previously co-owned the plant with Pampa. Additionally, the firm managed local arrangements of the deal in which UK power company Rurelec purchased the remaining 50% stake in Argentinean power plant owner Energía del Sur from its partner Basic Energy for \$25 million.

O'Farrell's partners have historically been seated on the borrower's side of the table in financial transactions, but recent experience has brought them to the issuer's side. Alejandro Anderlic has been a presence in the market, representing Gas Natural Ban on its \$39.5 million issuance of series 2 notes in a global programme.

Leading lawyers

Alejandro Anderlic
Rafael Salaberren Dupont
Uriel O'Farrell

Hope Duggan & Silva

While some competitors suggest that Hope Duggan lacks a clear strategy for growth, they also compliment the firm's partners on the quality of their work, as well as their professional demeanour across the table. "Hope is so professional and focused" says a competitor.

Toward the end of 2008 Hope was involved in several large M&A deals, often on the sellers' side. Hope counselled BBVA-owned Consolidar Salud, one of Argentina's largest health insurance providers, in its sale to Brazilian insurance company Omint.

One client that has kept the partners of Hope busy in recent months is Export Development Canada (EDC), the Canadian government's official export credit agency. An exemplary transaction involved EDC's \$8 million loan to renewable power developer Impsa as reimbursement of purchases made from a Canadian exporter. Hope also advised EDC on a \$7 million loan to Industrias Juan Secco for the purchase of power generators from GE.

Leading lawyers

Juan P Duggan
Adrian F J Hope
Gotardo C Pedemonte

M&M Bomchil

Competitors point to Bomchil's experience representing foreign clients' interests during the 2001 fiscal crisis, particularly in matters where the Argentinean government breached international treaties. Today, the firm enjoys a reputation for fielding able negotiators. "When we come to the table with them we can work with them," says one competitor.

Toward the end of 2008 Néstor Belgrano provided legal counsel to PSA Finance Argentina Compañía Financiera, the local financing arm of Peugeot Citroën, in obtaining authorisation for a \$300 million public offering. As counsel for German investment group DEG, Bomchil negotiated loans for several Argentinean companies, including a \$22.5 million loan to food production developer Arla Foods Ingredients.

Leading lawyers

Néstor José Belgrano

Other ranked firms

Clients and competitors alike agree that **Nicholson & Cano** has carved a niche in financial trusts and consumer credit. As one competing lawyer notes: "In the sub-market of retail credit securitisation, they are the leaders."

While the firm has enjoyed a high level of success in recent years working in the lucrative retail credit industry, rivals point to its trust structures for electronics retailer Bonesi as a factor in the company's messy bankruptcy filing.

The firm may also be hurting from the fact that they represented a majority of the private pension funds before the government takeover.

Leading lawyers: Carlos Marcelo Villegas

As the local arm of a global law firm, the Argentine partners of **Baker & McKenzie** enjoy the benefit of client referrals from its hub.

In October 2008 lawyers at Baker advised private-equity firm Riverside, through its subsidiary Diatron, in the acquisition of local medical equipment producer UV-Vis Metrolab for \$22 million. As part of the Baker & McKenzie franchise, the Argentine office is representing Bank of America in local aspects of its purchase of Merrill Lynch.

Representing Telecom Italia in the messy Telecom Argentina dispute, family-oriented **Estudio Garrido** is gaining notoriety as a firm with more than a merely boutique presence in corporate markets. The firm has a history in M&A transactions, recently representing Colombian editorial company Publicaciones Semana and New York investment firm Palmfund Management in a majority acquisition of Argentinean publisher Grupo Q.

Leading lawyers: Gustavo Garrido and Raúl Granillo Ocampo

Mitrani Caballero Rosso Alba Francia Ojam & Ruiz Moreno was formed in the first half of 2009 by the merger of Mitrani Caballero & Ojam and Rosso Alba Francia & Ruiz Moreno.

The firm has benefited from its representation of one lucrative client in particular - engineering and construction company Techint. The company's holdings in over 35 countries give Mitrani's partners a unique international scope.

The law firm of **Negri & Teijeiro** has traditionally been known for its multinational corporate clients, and competitors point in particular to its connections with cement producer Juan Minetti as a lucrative source of work.

In financial markets, Negri has found a prolific client in Natixis, representing the French investment bank in loans to local exporters that include steel renderer Siderar and grain miller Molinos Cañuelas. In September 2008 Negri advised the International Finance Corporation (part of the World Bank group) in a \$140 million loan to regional mall Cencosud.