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The International Comparative Legal Guide to:

Anti-Money Laundering 2018

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A practical cross-border insight into anti-money laundering law

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1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at national level?

Federal prosecutors in criminal matters are entitled to investigate money laundering. The Office of the General Attorney has an independent organisation as has been established by the Argentine Constitution, and it is entitled to prosecute all crimes. In this sense, it is important to mention that Argentina has a federal political system. Federal jurisdiction and state jurisdiction (provinces) coexist.

There is also an Economic Crimes and Money Laundering Prosecution's Office – "PROCELAC" – that can provide assistance to any federal prosecution.

Additionally, the local Financial Information Unit (FIU) – "UIF" – is the authority *par excellence* in money laundering prosecution.

Finally, the Federal Criminal Procedural Code allows aggrieved individuals to act as private prosecutors if they demonstrate a direct damage caused by the illicit fact.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

Money laundering is a federal offence according to Sections 303 – 306 of the Argentine Criminal Code (ACC). This offence was first introduced in 2001 by Law No. 25,246 about Anti-Money Laundering / Countering Financing of Terrorism (AML/CFT Law), and then amended by several acts in 2011, mainly by Law No. 26,683.

According to ACC Section 303.1, any person who converts, transfers, manages, sells, charges, disguises or in any other way puts in the market, goods amounting to more than Argentine Pesos (ARS) 300,000, originated in a previous illicit act, with the possible consequence that those goods will acquire a licit appearance, shall be punished with prison from three to ten years and a fine. Meanwhile, according to ACC Section 303.4, the same assumption will be considered "minor" money laundering (prison from six months to three years) if the amount of involved goods is less than ARS 300,000.

According to the Argentine Constitution, the burden of proof is on the accuser. The law also establishes that in order to prove money laundering, a predicate "illicit act" must be demonstrated. That means the government has to determine the existence of a previous illicit fact that has resulted in the acquisition of assets or money. This is enough if it meets the *probable* cause standard, which means that no final ruling or sentence is required to prove the predicate offence. "Self-laundering" is punishable in Argentina.

In addition, it is required to prove the *mens rea* of the perpetrator of money laundering. In this sense, the person responsible could only act purposely or knowingly.

Any type of crime could be included as a predicate offence, even tax evasion. The predicate offence shall have an "economic benefit" to be considered "minor" money laundering at least.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

Argentine AML/FTC Law is only applicable within the local territory. Nevertheless, it is possible to investigate money laundering if the predicate offence took place abroad. The dual criminality principle is required for a crime committed in an extraterritorial jurisdiction.

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

The investigation and prosecution of money laundering criminal offences are assigned to the Argentine Justice system (Courts in Federal Criminal Matters). Every investigation needs first to have the approval of a Federal prosecutor.

On the other side, the UIF's purpose is to prevent, detect and apply sanctions to money laundering cases; the UIF could independently file a criminal complaint for money laundering before the Federal Justice Courts and even promote the investigation to a private prosecutor. The UIF is connected to the Ministry of Finance and is part of the Executive Branch.

1.5 Is there corporate criminal liability or only liability for natural persons?

Corporate liability for money laundering is included in ACC Section 304. In general terms, there is entity liability when a company's representative commits a crime acting under the scope of their authority. Specifically, ACC Section 304 establishes that when the offence has been committed in the name of an entity or with the intervention or to the benefit of an entity, such entity may be subject to sanctions.

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

In case of natural persons, money laundering is punishable by 3 to 10 years in prison and also with a fine. Such a fine could be between 1 and 10 times the amount involved in the relevant money-laundering. The scale previously mentioned shall be increased by a third or reduced to half of its minimum amount if: the perpetrator performs the act habitually or as part of an illicit association or group formed with the purpose to commit these type of crimes; or the perpetrator is a public officer (who also shall be disqualified from public office for 3 to 10 years).

Regarding legal entities, several types of penalties could be applied. The main one is the fine from one to ten times the "undue" benefit that was obtained or that could have been obtained through the actions incurred in breach of this regulation. Other applicable penalties are: the full or partial suspension of the company's activity; the suspension of previously earned government/tax benefits; and the debarment from participating in government biddings and tenders. In certain severe cases, the courts may order that the legal entity must be terminated or cancelled.

1.7 What is the statute of limitations for money laundering crimes?

The maximum period of time to investigate a money laundering case is 10 years (reduced to three years in "minor" money laundering cases). Said term shall be interrupted or suspended under certain circumstances (Section 67, ACC).

1.8 Is enforcement only at the national level? Are there parallel state or provincial criminal offences?

Money laundering is considered a federal offence throughout the Argentine territory. It is regulated as a crime against the "economic and financial order". It is placed under Section 303, ACC; and no other provincial criminal offence could be introduced in this sense, or in a parallel state jurisdiction.

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

An asset freezing order issued by the UIF is exclusive to terrorism financing; it can be applied up to a period of six months. An "embargo" is another precautionary measure, which must be ordered by a judicial authority according to Section 23, ACC. The "embargo" tries to maintain the integrity of the assets. Confiscation and annulment of ownership are the hardest measures that can be taken within a criminal investigation and only a judge can decide on those. Confiscation may be ruled for money laundering cases, in Section 305, ACC. In these particular cases, assets could be confiscated without the existence of a criminal conviction and if other requirements convey.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

Until now, no banks nor financial institutions nor their directors or employees have been convicted of money laundering.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

The procedure for settling certain crimes is laid out in "suspension of trial" (Section 76 *bis*, ACC), complete damage compensation (Section 59.6, ACC) and also in a section on plea bargain agreements (Section 431 *bis*, Criminal Procedure Code). Suspension of the trial is not applicable due to the penalty scale of the crime of money laundering, and Section 59.6 has only just been added to the ACC. If the penalty for a particular case would not exceed six years of imprisonment, the defendant can plead guilty and apply for plea bargaining. A plea bargaining agreement shall be homologated by the Courts, thus such settlements are publicly available.

2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

UIF is the administrative authority responsible for imposing money laundering requirements on financial institutions and other businesses. Nowadays there are plenty of anti-money laundering requirements in force, depending on what activity or business is being regulated. In general, every financial institution and business has: 1) a "no-tipping off" obligation; 2) to fulfil the "*know your client*" policy (KYC); and 3) to comply with formal obligations before the UIF, mainly the obligation to report any suspicious transaction, activity or events.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

To date, there are no other anti-money laundering requirements imposed by self-regulatory organisations or professional associations.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

Self-regulatory organisations and professional associations are not responsible for anti-money laundering compliance and enforcement against their members. Such members directly assume responsibility or liability before the UIF in case of failure to comply with the AML regime.

2.4 Are there requirements only at the national level?

The UIF's acts, regulations and decrees are enforceable throughout the Argentinean territory and therefore the legal requirements regarding anti-money laundering policy are applicable at national level.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

The UIF is the competent authority for the examination and enforcement of anti-money laundering requirements. If a fine or sanction is applied, the criteria for examination would be publicly available. The UIF's investigations are confidential but the motivation behind an administrative sanction can be checked on the official site of the UIF.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

The UIF was created in 2000. Among its faculties and duties, the UIF is responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

Regarding enforcement actions in the administrative law field, sanctions and investigations on the breach of the financial information regime has a statute of limitations term of five years. The statute of limitations for criminal law actions is detailed in question 1.7 above.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

In case of money laundering connected with financing terrorism, the legal entity obligated to fulfil the requirements could be subject to a fine from five to 20 times the value of the assets obtained from the crime, if the legal entity has acted knowingly. The scale is from 20% to 60% of the value of the assets obtained from the crime if the failure was committed recklessly or negligently.

The duty of financial confidentiality must be unconditionally preserved, except if a judge's order deems otherwise. Breaching this duty under other circumstances is punishable with prison and with a fine from ARS 50,000 to ARS 500,000. Finally, any failure related to the financial information regime is punishable with a fine from one to times the total amount of assets or the total transaction amount related to the infraction, if it does not imply a more severe infraction or crime. If the total amount or the value of assets could not be quantified, the scale of the fine will be between ARS 10,000 and ARS 100,000.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

There are criminal law penalties that include prison, fines and specific sanctions when legal entities are involved (as described in question 1.5). The administrative sanctions are fines and monetary penalties.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

Most of the violations of the anti-money laundering regime are subject to administrative sanctions. Nevertheless, Section 22 of the AML/CFT Law punishes the breach of confidentiality duty committed by a public officer or employee of the UIF, or by any other member or entity included as an "obliged subject" (the penalty for such breach is imprisonment for between six months and three years). Such punishment would be applied if any confidential information is revealed outside the sphere of the UIF.

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

The UIF is responsible for evaluating any infraction of the anti-money laundering regime and imposing the corresponding fine. The administrative process consists on a written proceeding (detailed communication of the accused infraction, the defendant's deposition, production of evidence, closing arguments). The final ruling of the UIF can be challenged at the Court of Appeals on Federal Administrative Matters. Every process is confidential but the final decision regarding the administrative sanctions is public. Several financial institutions have challenged the UIF's decisions in administrative courts of appeal.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and other businesses are subject to anti-money laundering requirements? Describe which professional activities are subject to such requirements and the obligations of the financial institutions and other businesses.

According to Section 20 of the AML/CFT Law, there are certain activities and groups of professionals that are considered "obliged subjects" before the UIF. Such obliged subjects must report to UIF any suspicious activity or transaction from their clients, regardless of the amount, that could be related to money laundering or terrorism financing. They also have to obtain from their clients the information and documentation indicated in the resolutions applicable to each category or business, to maintain the confidentiality about their clients' information and compliance with the UIF's regime.

There are 23 categories of "obliged subjects". The categories are as follows: 1) banks and financial institutions; 2) exchange houses or individuals authorised to operate in foreign currency; 3) persons or legal entities whose activity or purpose is gambling, such as casinos; 4) stock agents, managing entities of investments funds, agents of the markets and any intermediaries in the purchase, rent or lending of securities; 5) brokers registered in the futures and options markets; 6) public registries of commerce, agencies of control of legal entities, real estate property registries, property registries of vehicles, pledge registries, boat ownership registries and aircraft registries; 7) individuals or legal entities dedicated to the trading of art pieces, antiques or other luxury objects, stamps or coin investments, or to the export, import, manufacturing or industrialisation of jewellery or objects with precious metals or stones; 8) insurance companies; 9) companies that issue travellers' cheques and entities that operate with credit or purchase cards; 10) companies which transport cash services; 11) postal service companies if they perform wire transfers or transport of money; 12) public notaries; 13) capitalisation or savings entities; 14) customs brokers; 15) the Argentine Central Bank, the Federal Administration of Public Revenues (AFIP), the Argentine Superintendence of Insurance, the Securities Exchange Commission, the General Inspection of Justice, the National Institute for Associations and Social Economy, and the Argentine Antitrust Court; 16) insurance producers, consultants, agents, brokers, assessors and loss adjusters; 17) licensed professionals whose activities are regulated by professional councils of economic sciences; 18) legal entities that receive donations or contributions from third parties; 19) licensed real estate agents or brokers and entities whose corporate purpose is real estate brokerage; 20) mutual and co-operative associations; 21) natural persons or legal entities whose usual activity is the sale or purchase of cars, trucks, motorcycles, buses and microbuses, tractors, agricultural machinery, road machinery, boats, yachts, aeroplanes or aerodynes; 22) individuals or legal entities that act as trustees, and individuals or legal entities that own or are affiliated with trust accounts, trustors and trustees related to trust agreements; and 23) legal entities that organise and regulate professional sports.

3.2 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

UIF resolutions state that obliged subjects must follow anti-money laundering proceedings. The said proceedings, outlined in a manual, depend on the nature of the obliged subject's business, but in general terms they consist of appointing a compliance officer, training personnel to identify suspicious transactions, having a confidential register about risk analysis and management of reported suspicious transactions, setting up technological tools to allow for strengthening control and analysis of suspicious transactions, and to perfect policies regarding KYC in order to fulfil the minimum standards required by its own businesses' UIF resolution.

3.3 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

Each obliged subject must fulfil a KYC policy, keeping data and documentation regarding their clients. In this sense, they are also forced to analyse the information and documentation provided by their clients and to determine a profile/category for each of them. Keeping a record of the data profile from clients and the documentation of the transactions is mandatory for five years according to the AML/FT, but the UIF's resolutions state ten years.

It is mandatory for banks and financial institutions to identify the individual or legal entity that is carrying on a transaction when it is equal to or greater than ARS 200,000 (or its equivalent in any foreign currency).

Regardless of the involved amount, reporting is required when an obliged subject has detected a suspicious transaction, activity or event. The obliged subject must report this suspicious activity to the UIF within a 150-day period. If the suspicious transaction was related to terrorist financing, the period to report it is 48 hours.

Each obliged subject must analyse, evaluate and explain why the transaction is considered suspicious. They also have to supply to UIF with sufficient information to enable the reconstruction of the transaction. The obliged subjects must submit their report and attached documentation directly to the UIF via an online system called *Reporting System for Suspicious Transactions*.

3.4 Are there any requirements to report routine transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

Other than "large cash transactions" (the ones equal to or more than ARS 200,000) each obliged subject must file: 1) a monthly report about "international transactions", which must include all funds transfer made in local or foreign currency, between local accounts and foreign accounts; and 2) an "annual systematic report", through which the obliged subject must file information related to its own compliance officer, its own clients' profiles and types, own annual accountable volume, and other corporate and general information about itself.

3.5 Are there cross-border transaction reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

As was mentioned in the previous section, each cross-border transaction must be reported every month by the obliged subjects. It is important to remark that this "monthly report about cross-border transactions" does not constitute a "Suspicious Activity Report" (SAR). Each obliged subject shall then evaluate if the cross-border transaction is suspicious. In that case, the appropriate SAR should be drafted and filed to the UIF. The monthly report about cross-border transactions must contain: the date of the transfer; the amount in ARS or foreign currency; the country of origin of the beneficiary's funds; the identity of the origin and beneficiary's bank; and the individual or legal entities involved in the transfer of funds.

3.6 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

Due diligence (DD) requirements consists of obtaining and updating data about customers' personal, economical, commercial and tax situation. Since UIF issued the Resolution E-30/2017, in June 2017, there are three types of DDC according to the client's risk-assessment. For low-risk clients, there is a "simplified DD" proceeding, for medium-risk clients there is a "traditional" DD proceeding, and finally high-risk clients have an appropriated enhanced DD proceeding. In general terms, obliged subjects are required to keep updated information about clients' identification, contributing parties, legal status, domicile, main activity, condition

of "politically exposed persons" (PEPs), purpose and functions of their accounts and transactions. Due diligence shall also be enhanced if the client is a foreign or domestic PEP. Financial institutions must request that their clients provide information and sign specific documents (sworn statements) about the origin of the funds involved and the destination or final beneficiary of the funds involved.

3.7 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

According to the Central Bank of Argentina (known in Spanish as "BCRA"), it is forbidden for foreign shell banks to become shareholders of a financial institution in Argentina. Also, shell banks are not allowed to be shareholders of exchange institutions, or involved in setting up new exchange houses, agencies or offices.

3.8 What is the criteria for reporting suspicious activity?

AML/CFT Law and the UIF's rules consider that suspicious events are those transactions – intended or performed – which raise suspicion with regards to Money Laundering and Financing Terrorism, or which having been previously identified as unusual, after the review and evaluation performed by the obliged subject, do not justify their unusual condition or suspicion still remains that they are linked or are going to be used to launder money or finance terrorism. These transactions must be reported to the UIF through the SAR. The 'unusual transaction' concept is defined as 'those transactions performed or intended in an isolated or reiterated manner, regardless of the amount, which lack economic and/or legal justification, are inconsistent with the client's profile, or which, due to their frequency, regularity, amount, complexity, nature and/or other particularities, do not correspond with the usual market practices and customs'.

3.9 Does the government maintain current and adequate information about legal entities and their management and ownership, i.e., corporate registries to assist financial institutions with their anti-money laundering customer due diligence responsibilities, including obtaining current beneficial ownership information about legal entity customers?

According to Section 14 of the AML/CFT Law, the UIF is entitled to request from any governmental authority (both with federal and local jurisdiction), non-governmental or private entity any kind of information or documentation about legal entities. As a reinforcement of this capacity, before analysis of a report is complete, obliged subjects may not oppose the banking secrecy, tax secrecy, professional secrecy or any type of confidentiality duty in order to avoid the fulfillment of the UIF's request. This faculty allows the UIF access to current and adequate information.

3.10 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions?

The UIF's resolutions rule that payment orders for a funds transfer must be completed with accurate information about the originators and beneficiaries. This information should also be provided to other financial institutions that may be intermediate in the payment.

3.11 Is ownership of legal entities in the form of bearer shares permitted?

Bearer shares are not permitted in Argentina for any kind of legal entity.

3.12 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

As was mentioned in question 3.1, a significant number of non-financial institution businesses are subject to AML requirements since they are obliged subjects before the UIF (Section 20, AML/CFT Law).

3.13 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

As was mentioned in question 3.1, customs brokers are subject to AML requirements since they are obliged subjects before the UIF.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

There are additional reforms that have been issued by Congress in the last year that – despite not being specifically established for AML – could be useful for enhancing investigations into such crimes. These reforms allow the use of informant agents, revelatory agents or undercover officers for prosecuting certain "complex crimes", where money laundering is thought to be involved.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

Argentina has made significant progress during the last years, but despite recent legal reforms, effective implementation of the AML regime continues to be a serious challenge. A clear example is the reduced number of cases that have been successfully prosecuted. This main problem is caused by deficiencies in the judicial procedure, the lack of independence of the judges and prosecutors, and the delays on the investigations. Another obstacle is the lack of interagency coordination between the UIF and the federal security forces or the federal prosecutors.

On the other side, important and necessary measures such as seizure of assets, the freezing of funds, and forfeiting of illicit assets do not have a complete or precise legal framework. Such deficiencies are notable when these measures are applied in real cases. Another relevant defect is that Argentina has still not completed an AML/CFT national risk assessment. Furthermore, it is remarkable that many non-financial business or professionals that are obliged subjects before the UIF, still do not have their own regulatory entities, and the UIF does not have enough resources to adequately supervise them for AML compliance.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Counsel of Europe (Moneyval) or IMF? If so, when was the last review?

In 2011, FATF identified structural obstacles and defects in the Argentinean legal system concerning ML/FT. As a result, Argentina was added to the "grey list" (countries which have strategic AML deficiencies). In October 2014, the FATF plenary decided to remove Argentina from the "grey list" and put into effect a careful following of the country, in order to control its continuous concern with every money laundering and financing of terrorism issue identified in the Mutual Evaluation of Argentina follow-up report (June, 2014).

Currently, as a result of 2012's international change of standard, Argentina faces new challenges to fulfil the FATF's 40 recommendations, not only from a technical and formal perspective, but also to display effective implementation. The next evaluation is scheduled for 2022.

4.4 Please provide information for how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

The FATF's official website (www.fatf.org) can provide material in English about Argentina. Also, the CIPCE's (Centre for Research and Prevention of Economic Crime) website (http://www.cipce.org.ar/en) is available in English, but its academic material is in Spanish. The anti-money laundering laws, regulations, administrative decrees and guidance are also in Spanish. In this sense, you can visit the UIF's website (https://www.argentina.gob.ar/uif) and PROCELAC's official site (http://www.mpf.gob.ar/procelac/).

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