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White-Collar Crime

Argentina
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ARGENTINA

Law and Practice

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1. Legal Framework

1.1 Classification of Criminal Offences

Argentina is organised as a federal state, divided into 24 local jurisdictions (23 provinces and the City of Buenos Aires) apart from the Federal Government. The Criminal Code and other substantive laws are passed by the Federal Congress and apply to all jurisdictions. However, each jurisdiction is empowered to pass its own Criminal Procedure Code, and decide on its own violations, infringements or administrative infractions that are not covered by the Criminal Code.

Crimes are covered by the Criminal Code and in specific statutes, and there is no distinction between misdemeanours, felonies and crimes. However, offences can be divided into state or federal, depending on the interest of the Federal State in pursuing the crime or regulating an aspect related to the crime (eg, currency counterfeiting or smuggling are federal offences, but local tax fraud or corporate fraud are state crimes).

Intent is required in all crimes, unless the contrary is stated. In other words, negligence and recklessness are punishable only if they are expressly covered in the law.

A particular feature of the Argentine criminal legal framework is that it allows private prosecutions. That means that victims can charge, request the seizure of proceeds and enter into agreements with the defendant, independently of the prosecutor.

1.2 Statute of Limitations

In general terms, Section 62 of the Criminal Code establishes that the statute of limitation period shall be calculated according to the maximum sanction that is specified for each offence. There are certain specific limitations to that general rule. For instance, the statute cannot exceed 12 years, nor can it be under two years. The period is two years for crimes that are punished only with a fine.

Moreover, the criminal code establishes that certain acts within the proceedings can toll or interrupt the statute of limitation, while prosecutors have applied legal theories in order to extend the limitation period.

According to regulations, the statute of limitation can be extended when a crime is part of a pattern or practice, or an ongoing conspiracy – eg, when it amounts to a "continuing crime" or, in other words, when the criminal has the intention to commit a crime during a certain period of time. In that scenario, prosecutors consider that the statute of limitations period begins to run as of the last criminal conduct/unlawful act or when the defendant reports accountability.

In addition, there are certain circumstances that will provoke a suspension of the term, with the period for the statute of limitations continuing when the cause of the circumstance or suspension finishes.

The most applicable reason for the suspension of the statute of limitations is if any perpetrator or accomplice of the crime is a public servant. While the public servant is engaged in his or her functions, the term will be suspended for all persons that intervene in the crime until he or she abandons his or her public functions. Section 67 of the Criminal Code also establishes other reasons for suspension, such as prejudicial disputes or the victim's adult age in sexual harassment cases.

According to Section 67 of the Criminal Code, the term of the statute of limitations is interrupted only by:

- the commission of another crime;
- the issue of an indictment;
- charges brought against by the prosecutor after the investigation is finished, thus initiating the trial phase;
- the summons to trial; and
- the judgment of conviction, even if it is not final.

In every case, the time shall begin to run at midnight on the day the crime has been committed or, in the case of a continuing offence, the day on which the crime concluded. Prosecutors usually have a broad interpretation of the latter, starting the statute of limitation period when the consequences of the crime end. This legal theory is usually applied to environmental crimes.

1.3 Extraterritorial Reach

Argentine enforcement authorities have jurisdiction for crimes committed inside Argentina's borders or in a place subject to its jurisdiction. They may also investigate crimes that have an impact on the territory of Argentina, or that have been committed abroad by Argentine officials while on duty. In addition, Argentina has jurisdiction over bribery (crime ruled in Section 258 of the Criminal Code) if it has been committed abroad by Argentine citizens or legal entities with their domicile located in Argentina. The foregoing is related to a recent modification introduced by Law No 27,401 in 2018, regarding corporate criminal liability to meet international standards.

1.4 Corporate Liability and Personal Liability

The criminal liability of corporations is established for specific offences, such as money laundering (Section 304 of the Criminal Code), financial crimes (Section 313 of the Criminal Code), smuggling (Section 875 of the Customs Code) and tax fraud (Section 16 of title XI of Law No 27,430), among others. In addition, Law No 27,401 ruled on corporate liability for the bribery

of government officials, accounting fraud, the illegal enrichment of public officers and employees, and transactions that are prohibited for public officials.

Corporations shall be automatically liable for the illegal conduct of any agent or employee; in other words, there is strict liability, similar to the Foreign Corrupt Practices Act (FCPA) and other US regulations. The individual must act on behalf of the corporation and obtain a financial benefit to the corporation, directly or indirectly. According to Section 9 of Law No 27,401, corporations are not punished if they "spontaneously" report the crime, give back the benefit obtained to authorities and have a well-designed compliance programme.

In addition, managers' liability should not be automatic when the corporation is liable. Nevertheless, when the crime is very serious regarding its extension and damage (circumstances that usually apply to white-collar crimes), charges are also brought against management, since prosecutors believe that the crime "should not have taken place but with the knowledge" of the management. Prosecutors must prove that the management participated in the commission of the crime, actively or by omission in order to have a conviction. White-collar crimes require intent, so prosecutors usually use criminal theories that extend liability, such as "wilful blindness" and dolus eventualis.

Argentine legislation does not have any policy regarding a preference over pursuing entities instead of individuals. In general terms, prosecutors are compelled to investigate every person involved in the crime. However, since November 2019 a new legislation has come into force within the federal justice; according to Section 31 of the new Federal Criminal Procedure Code, prosecutors can decide in certain or irrelevant cases where insignificant money or damages are involved whether they want to dismiss criminal charges, either partially or completely.

Finally, in the event of a merger or acquisition, case law establishes that corporate liability will continue on the new entity incorporated from the acquisition or merger. This rule was later included in Section 3 of Law No 27,401, referring to corporate liability for corruption acts.

1.5 Damages and Compensation

The victim can request civil damage or torts regulation within the criminal procedure. They can also be pursued before civil courts – in general terms, through an ordinary process where a victim has to sue the defendant and offer evidence of the damage and the cause-consequence relation between the defendant's act and the economic loss or damage. The choice of one or both claims depends on the case.

Civil liability requires damage to a certain person to occur, and only that individual (or their agent or successor) can bring a claim. Liability in this area can arise under tort, through the fundamental principle of alterum non laedere (not to injure another) which precludes individuals from causing harm to others. This principle is set out in Section 19 of the Constitution and is expressly codified in Sections 1749 to 1759 of the Civil and Commercial Code (among others).

An investigation before criminal courts may help to prove and obtain compensation in a civil jurisdiction, as well as the seizure and forfeiture of the proceeds. Although both claims could be pursued independently, facts are first established in the criminal proceeding over the civil claim.

Legislative modifications in recent years have introduced new aims to the traditional criminal procedure, particularly regarding the victim's status. In this respect, when a perpetrator asks for a probation or any plea bargain, he or she must offer a "reasonable" compensation to the victims according to his or her economic capacity or possibilities. The victim has the opportunity to accept or refuse it. The victim can maintain the right to pursue civil damage compensation or tort before civil courts only in the case of a refusal.

Another recent modification of the procedure is related to conciliation with the victim. In fact, an agreement with the victim and its full damage compensation could serve as a cause for the dismissal of charges (Section 59 of the Criminal Code and Section 34 Federal Criminal Procedure Code).

Class actions are not legislated for in the Argentine framework, nor is victims' compensation in white-collar crimes. The Argentine Constitution (Sections 42 and 43) and some important case law precedents (known as CSJN "Halabi" and "Mendoza") have recognised collective litigation as a method for claiming for certain rights violations, consumer infractions or environmental conflicts, but there is no precedent where the method has been applied for compensation from an offence.

Finally, it is relevant to mention a recent civil procedure established for asset recovery in cases of white-collar crimes connected with corruption acts. In this case, on 21 January 2019, the Argentine Executive Branch issued Decree No 62/2019, implementing a Procedural Regime for Civil Action that applies to non-conviction-based asset forfeiture in favour of the State. The procedure regime is applicable to fraud against the Public Administration, racketeering, bribery, influence-pleading, incompatible dealing in the exercise of public office, the illegal enrichment of a public official, money laundering and certain forms of smuggling, among others.

1.6 Recent Case Law and Latest Developments

This year, a criminal case was opened for fraud and money laundering against one of the largest grain-exporting companies in Argentina (Vicentin). Among other victims, international banks are involved. The prosecutor and the financial intelligent unit (FIU) are seizing the company's assets in Argentina and abroad, within the criminal procedure.

During 2018 and 2019, a high-scale corruption case rocked the Argentine judicial system. The case is known worldwide as "the Notebooks Scandal", due to the discovery of eight school-style notebooks belonging to a federal government driver in Buenos Aires, with the details of 12 years' worth of bribery payments he had delivered to Argentine government officials of the highest ranks, counting on the participation of certain construction companies. All the companies' directors involved and the public officials mentioned in the notebooks have already been indicted, and most of them entered into plea-bargain agreements. The case has recently finished the investigation stage and in September 2019 the accusation against a significant group of defendants was promoted to trial. Others remain under investigation; however, the indictments of some of them have been overruled. The trial has not begun yet, since the start of the COVID-19 lockdown and the restrictions arising from the pandemic. The amount of money involved in this investigation made the Government and the Congress speed up the issue of Decree 62/2019 regarding the asset recovery procedure, as described in **1.5 Damages and Compensation**. It also made companies reconsider their compliance policies, in order to prevent acts of corruption from their own employees/managers.

Because of the COVID-19 pandemic, cybercrimes have increased, so several bills criminalising illegal conducts are before the Federal Congress, pending approval. Most of them are not related to white-collar crimes.

2. Enforcement

2.1 Enforcement Authorities

As mentioned in **1.1 Classification of Criminal Offences**, Argentina is a federal state divided into 23 provinces and the City of Buenos Aires. Each local jurisdiction and the Federal State have their own enforcement authorities and criminal procedure code. In general terms, proceedings are adversarial for all state crimes, but for federal crimes the investigation is conducted mainly by the judge. It must be noted that the latter is under amendments in order to meet adversarial standards over the country.

There are usually specialised criminal prosecutors according to the subject-matter. The most important specialised federal prosecutions office in white-collar crimes is the PROCELAC (Public Attorney of Economic Criminal and Money Laundering – www.mpf.gob.ar/procelac), which handles complex financial crimes or collaborates with other prosecutors in their resolution. Governmental agencies such as the Federal Administration of Public Revenue (AFIP), the Financial Information Unit (FIU) or the Anti-Corruption Office (OA) can request the initiation of an investigation and also act during it as private prosecutors. During COVID-19 restrictions, the cases of corporate fraud through digital devices or cybercrimes connected with fraud or computer fraud have considerably increased. In this respect, the Public Attorney Special Unit in Cybercrime (UFECI) has also intervened when investigations are about white-collar crimes, but only those committed remotely or by electronic means.

The Argentine criminal procedural federal regime allows the victim of a crime to bring charges for white-collar crimes, regardless of the charges that can be brought by a public prosecutor. Depending on the nature of the crime being investigated, each district/subject has its own enforcement authority and can require the collaboration of federal enforcement offices.

Civil/administrative liability can be brought by enforcement agencies, regardless of a criminal investigation. The AFIP, the OA, the Central Bank (BCRA), the Securities Exchange Commission (CNV) and the FIU, among others, can impose civil or administrative sanctions related to the same facts that are under investigation by a prosecutor. In addition, there are special units that investigate money laundering and other business crimes within the AFIP and the BCRA.

2.2 Initiating an Investigation

Criminal investigations are initiated when any information on a crime reaches the courts or the Public Attorney's office. Also, investigations can be initiated by a report submitted by law-enforcement agencies, any citizen or victim of a crime, or ex officio by prosecutors. Anonymous reports can initiate an investigation if they give enough information to determine that a crime has been committed. The steps and the guidelines that rule any investigation are in the Argentine Criminal Procedure Code for the federal jurisdiction, and in each criminal procedure code of each province.

2.3 Powers of Investigation

The prosecutor or investigating judge should not require information or documents from a corporation under investigation because it could violate the corporation's right against self-incrimination. In practice, this sometimes happens. If the corporation collaborates spontaneously with the investigation, it is considered as a mitigating circumstance and, under certain circumstances, can even preclude the punishment.

When the government decides to raid a company and seize documents, the warrant must always be issued by a court, and must be reasonably grounded.

Regarding employees or third parties, a prosecution can demand that a corporation employer provide information about an investigated individual, and request that the individual provide documents, as long as there is no violation of the right against self-incrimination; if the government decides to raid the employee's office or home, the search warrant must be grounded, too.

2.4 Internal Investigations

According to regulations from the Anti-Corruption Office contained in Law No 27,401, companies should have policies in place, approved by the board. It is suggested that internal investigation protocols should specify how interviews should be conducted (their registration through electronic or magnetic devices), the reason for the interview, the possibility of accessing lockers, inspections of clothing and bags, narcotics' consumption tests, video surveillance, and access policies for the labour tools that the employer has given to the worker (ie, cell phones and emails), with the express stipulation that such devices can be supervised by company officials at any time.

Furthermore, Section 9 of Law No 27,401 on Criminal Corporate Liability and Section 60 of Law No 27,442 about Antitrust both establish immunity for legal entities that self-report; the latter law also grants the right to individuals. In both cases, the self-report must be "spontaneous" – ie, not motivated by a state investigation. Its absence should be considered by the judge as a mitigating element.

2.5 Mutual Legal Assistance Treaties and Cross-Border Co-operation

Every form of co-operation responds to formal mechanisms of requirements. Each way of supplying information and providing judicial co-operation will depend on whether there is a treaty between the states involved; if there is not, Argentina will apply Law No 24,767, which dictates the methods of international judicial collaboration in cases where there are no special regulations.

There are also regional and multi-lateral treaties that contain specifications regarding collaboration in criminal matters. For instance, Argentina has signed the Mutual Assistance Collaboration Protocol in Criminal Affairs for MERCOSUR (Laws No 25,095 and 26,004), the Inter-American Convention about Mutual Assistance in Criminal Affairs (Law No 26,139), the United Nations Convention Against Transnational Organised Crime (Law No 25,632), the United Nations Convention Against Corruption (Law No 26,097), the Inter-American Convention Against Corruption (Law No 24,759/27,430) and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Law No 25,319).

The Argentine Financial Intelligence Unit is part of the Egmont Group, and the Federal Revenue Authority exchanges information with its foreign counterparts on a regular basis.

2.6 Prosecution

As mentioned in **2.1 Enforcement Authorities** and **2.2 Initiating an Investigation**, investigations generally begin with a report or complaint. Usually, companies or individual victims file a complaint when they find out that an offence has been committed against them. Also, prosecutors or enforcing agencies may initiate the investigation by a written report or complaint (for example, the Federal Administration of Public Revenue used to start the majority of tax fraud cases by filing a complaint). Since COVID-19 restrictions, different prosecution agencies or offices from the Judicial Branch have enabled e-mail accounts or digital applications where the new complaint can be filed; each complaint should then be ratified by a virtual hearing with the corresponding authorities.

As mentioned in **1.4 Corporate Liability and Personal Liability**, there is no policy or preference to pursue corporations instead of individuals; when charging a crime, the criminal procedural rules apply the same standard for companies and individuals. Therefore, in general terms, an individual or entity will be charged with an offence if – according to Section 294 of the Argentine Criminal Procedure – there are sufficient and reasonable grounds of the offence's commission and his or her or its intervention in such acts. The same standards are also applied in steps further along the procedure, such as the issue of an indictment or the remission of the investigation to oral trial. Differences may arise from the dissimilar criminal liability requirements regarding companies and individuals (as mentioned in **1.4 Corporate Liability and Personal Liability**), but there are no different rules or guidelines relating to charging or formal action.

2.7 Deferred Prosecution

The federal legal framework does not allow agreements with the prosecutor to defer or not to prosecute the case, but some state regulations do. In general terms, victims can enter agreements with the defendant in certain crimes such as fraud, when the offence is not against the state (ie, bribery).

Notwithstanding, Section 76 bis of the Criminal Code regulates an alternative system, named "suspension of the trial under supervision", which is generally referred to as "probation", and is only available for individuals (ie, not applicable to legal entities). This mechanism applies for less severe crimes (punished with

fewer than three years of prison as a maximum). It is forbidden to suspend the process in tax fraud cases, smuggling cases, or offences involving public servants, so there are only a few cases of white-collar crimes that could be subject to probation. If applicable, the defendant must request the benefit from the judge (which will sometimes will need the consent of the prosecutor), offer reasonable economic compensation to the victim, and comply with community service and other rules of "good conduct" ordered by the judge, during a period of one to three years. After compliance with all those conditions, the defendant will be dismissed and the criminal action will be extinguished.

2.8 Plea Agreements

Generally speaking, in the federal criminal procedure, prosecutors and defendants come to an agreement where the defendant recognises responsibility for a crime and the prosecutors negotiate a lesser conviction (not greater than six years in prison in the federal jurisdiction). This mechanism is ruled in Section 431 bis of the Criminal Procedure Code, and is also known as an "abbreviated trial". No oral trial or plea is held, since it is only a written agreement between those two parties. So, instead of a plea agreement, it actually works as a conviction agreement. A court must then ratify the agreement and issue the sentence accordingly. Also, the court must verify whether or not the defendant was under coercion, and whether or not the conviction settled is proportionate. If there are multiple defendants, they should all agree with the conviction and the acknowledgement of facts.

Since the implementation of Law No 27,304, certain defendants can collaborate with the investigation in exchange for a reduced conviction. This tool is applicable for crimes related to acts of corruption or complex investigations, with Law No 27,304 expressly mentioning white-collar crimes such as fraud against the Public Administration, influence-pleading, bribery and other crimes against the Government Administration, money laundering and related economic crimes, and conspiracy or illicit association, among others. Law No 27,401 allows similar agreements for corporations, but only for corruption.

The collaboration agreement could be arranged during the first or pre-trial stage of the criminal procedure, which ends with the remission of a formal accusation to trial. Only the prosecutor and the defendant (with the assistance of his or her defence attorney) are parties in the collaboration agreement, but then the intervening magistrate must validate the agreement. As a rule, the benefit from the collaboration should be expressed in the sentence, but the benefit could also help towards the defendant's release if he or she is under preventive detention throughout the investigation. If the defendant knowingly provides false information, he or she could be punished with four to ten years of prison, according to Section 276 bis of the Criminal Code.

3. White-Collar Offences

3.1 Criminal Company Law and Corporate Fraud

The most generic corporate fraud offence is set forth in Section 173, paragraph 7 of the Criminal Code, and punishes anyone who "by law, authority or legal act, was in charge of the management, administration or care of pecuniary goods or interests of others, and in order to procure for themselves or a third party, an improper profit or whoever in violation of their duties damages the interests entrusted or abusively compels the owner of these," with imprisonment from one month to six years. This offence requires intent and the additional purpose of procuring a benefit for the perpetrator or a third party. The offence also requires an economic damage or loss in order to be considered as having been committed.

3.2 Bribery, Influence Peddling and Related Offences

Sections 256 to 259 of the Criminal Code establish the bribery of public servants and influence-peddling as crimes against the Public Administration. Both active and passive offences of bribery are punished. Passive bribery is when a public servant receives gifts, money, payments or any kind of assets from an individual in exchange for a benefit. Active bribery refers to any individual who personally or through an intermediary gives or offers any gift for the purpose of obtaining any of the conducts punished by Sections 256 (passive bribery) and 256 bis, first paragraph (influence-peddling), and shall be punished with imprisonment from one to six years. If the gift is given or offered with the purpose of obtaining any of the conducts described in Sections 256 bis, second paragraph (qualified influence-peddling) and 257 (qualified passive bribery), the punishment shall be imprisonment from two to six years. If the culprit is a public official, special disqualification from two to six years shall also be imposed in the first case, and from three to ten years in the second case.

The punishment is quite low, ranging from one to six years' imprisonment and a fine of two to five times the unlawful benefit obtained. It is an aggravating circumstance when the public officer is a judge, a public prosecutor or any other person related to the Judicial Branch.

Other crimes related to corruption are set forth in Sections 260 to 268 of the criminal code, such as the embezzlement of public funds, incompatible negotiations with the exercise of public functions, and illegal exactions. In these cases, the punishments are aimed at public servants, so a person who does not perform that charge or function could not be punished with the same penalty.

Non-public officers are punished in Section 174, paragraph 5 of the Criminal Code, which applies to "whoever commits fraud to the detriment of any public administration." In any case, the punishment is imprisonment of two to six years, in addition to a fine of two to five times the benefit involved in the transaction.

3.3 Anti-bribery Regulation

Argentina has ratified all the international treaties against private and public corruption, as well as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Sections 22 and 23 of Law No 27,401 about Corporate Criminal Liability state the main features of a compliance programme to prevent corruption. The fulfilment of a diligent and effective compliance programme is considered as a mitigating circumstance, but a corporation can obtain immunity from prosecution (Section 9) if it also reports a crime "spontaneously" and returns the benefits or goods illegally obtained. Section 24 of Law No 27,401 also sets out that the compliance programme is mandatory if the corporation has any public contact. There are no criminal or administrative offences for not implementing such a compliance programme, but it is highly recommendable to have a programme in place, since it could be considered as a criminal defence for the corporation and its management.

3.4 Insider Dealing, Market Abuse and Criminal Banking Law

Insider trading is described in Section 307 of the Criminal Code, which sets forth imprisonment of one to four years, a fine equivalent to the amount of the operation, and special disqualification of up to five years for a director, member of an inspection body, shareholder, shareholder's proxy and anyone who, for his or her work, profession or function within an issuing company, by himself or herself or by an intermediary, provides or uses privileged information to which they had access during their activity, for the negotiation, purchase, sale or liquidation of negotiable securities. Aggravating circumstances are set forth in Section 308.

Section 309, paragraph 1, of the Criminal Code establishes the punishment for securities' fraud as imprisonment of one to four years, a fine equivalent to the amount of the operation, and disqualification of up to five years for a person who:

- performs transactions or operations that raise, maintain or lower the price of negotiable securities or other financial instruments, using false news or feigned negotiations, or meeting or colluding with the main holders in order to produce the appearance of greater liquidity or to negotiate it at a certain price; or
- offers negotiable securities or financial instruments, disguising or concealing facts or true circumstances, or affirming or suggesting false facts or circumstances.

3.5 Tax Fraud

Title XI in Argentine tax Law No 27,430 establishes the penalties for the commission of tax crimes. The law punishes tax evasion, simple or aggravated, the wrongful use of tax subsidies, the fraudulent obtainment of tax benefits, tax misappropriation, fraudulent tax insolvency, fraud in payment, the fraudulent alteration of records, and the misappropriation of social security resources. The law requires intention to commit the crime; negligent or reckless conduct is not punished. There is no specific obligation on individuals or companies to prevent tax evasion, but the penalties are greater if any public servant takes part in any tax crime.

It must be noted that the law allows the taxpayer to close the criminal case by paying the full amount of the claim, provided he or she does so within 30 working days after the indictment.

In addition, in August 2020, regarding the context of COVID-19, Congress passed Law No 27,562, approving a tax moratorium for corporations. It establishes that if the claimed amount is fully cancelled by the taxpayer, charges for tax fraud are dismissed.

3.6 Financial Record-Keeping

Regarding accounting fraud, Section 300 of the Criminal Code applies a punishment of six months to two years' imprisonment for: "The founder, director, administrator, liquidator or trustee of a corporation or co-operative or of another collective person, who knowingly publishes, certifies or authorises an inventory, a balance, a profit-and-loss account or the corresponding reports, minutes or memoirs, false or incomplete, or informs the assembly or meeting of partners, with falsehood, about important facts to assess the financial state of the company, whatever the purpose sought to verify it." In similar terms, an offence is established in Section 309, paragraph 2, and Section 3011, for corporations that are regulated by Argentina's Securities Exchange Commission (CNV).

3.7 Cartels and Criminal Competition Law

Cartel and unlawful competition crimes are covered in Section 309 of the Criminal Code, which punishes with imprisonment of one to four years, a fine equivalent to the amount of the operation and disqualification of up to five years, whoever "performs transactions or operations that raise, maintain or lower the price of negotiable securities or other financial instruments, using false news, feigned negotiations, meeting or colluding with the main holders, in order to produce the appearance of greater liquidity or to negotiate it at a certain price." Regarding other

cartels and competition offences, there are only antitrust civil sanctions, which are set forth by statute 27,442.

3.8 Consumer Criminal Law

According to Law No 24,240 about Consumers' Protection, there are only civil sanctions for companies. In this respect, Section 50 of Law 24,240 sets forth that, if the commission of an offence is detected during the civil/administrative process, it will be reported to the competent magistrate on criminal matters. Consumers can report illicit conduct from companies when their damages are caused as the result of a "generic" fraud, but the proceeding and complaint will be separate. This generic fraud is punished with imprisonment of one month to six years, according to Section 172 of the Criminal Code. There are some special fraud crimes that could apply, such as Section 173, paragraph 1, which punishes fraud in the substance, quality or quantity of goods. In addition, Section 199 punishes the adulteration or falsification of drinking water or food or medicinal substances intended for public use or consumption of a group of people in a way that is dangerous to health. Such crimes only allow personal liability.

3.9 Cybercrimes, Computer Fraud and Protection of Company Secrets

Although Argentina has signed the Budapest Convention, no autonomous business cybercrime has yet been ruled on in Argentina. The recent developments are related to Law No 26,388, which was passed in 2008 and amended regular crimes such as damage, fraud and violation of privacy, among others, in order to encompass cyber-means of committing such crimes, or as aggravating circumstances.

For instance:

- cyber-damage established by Section 183 of the criminal code set forth that whoever alters, destroys or disables data, documents, programs or computer systems, or sells, distributes, circulates or introduces into a computer system any program designed to cause damage, shall be punished with imprisonment of 15 days to one year;
- under the title "violation of secrets and privacy" of the Criminal Code, some data protection offences were punished; and
- any conduct that commits fraud by manipulating any electronic means is punished with a maximum of six years of imprisonment (Section 173, paragraph 16, of the Criminal Code).

Because of the COVID-19 pandemic, cybercrimes have increased, leading local states to pass violations related to the subject.

3.10 Financial/Trade/Customs Sanctions

Smuggling and any other customs-related offences are punished by Sections 863 to 875 of the Customs Code. Smuggling is punished with imprisonment of two to eight years, or four to ten years when there are aggravated circumstances (such as the smuggling of drugs, guns or forbidden goods, or offences involving a value higher than ARS3 million, among others).

In addition, Law No 19,359 punishes any violation of the exchange/trade regulation established by the Central Bank. The sanctions considered in that law for any infraction vary from a fine of up to ten times the amount of money involved, a prison sentence of one to four years (which could be replaced by a fine), a prison sentence of one to eight years for a second offence, and suspension or cancellation of the legal entity in the most severe cases. Law No 19,359 also sets forth corporate and management liability towards the imposed fines.

See **3.4 Insider Dealing, Market Abuse and Criminal Banking Law** regarding other financial and trade sanctions.

3.11 Concealment

Concealment is regulated in Section 277, paragraph 1, of the Criminal Code and applies to any act of collaboration after the execution of a crime perpetrated by another, in order to hide, withdraw or remove from observation, or cover or keep from sight, evidence or benefits from crime. Some other aggravating or mitigating circumstances are established in the Criminal Code, Section 277, paragraphs 2-4. Accordingly, the penalty for concealment may vary from one month to four years in minor circumstances, or from one to six years when there are aggravating circumstances.

3.12 Aiding and Abetting

According to Sections 45 and 46 of the Criminal Code, any person who has provided any substantial assistance or relevant co-operation to the perpetrator of a crime, without which it would not have been possible to carry out that crime, shall be punished with the same measures as the perpetrator. In addition, the same punishment shall be imposed upon any person who has directly instigated another person to commit a crime.

When a person co-operates in any other way in the crime, providing secondary assistance or being involved due to a promise made prior to the perpetration, he or she shall be punished with a reduced punishment. If the assistance was made after the crime was committed and no prior promise of help was made, it is considered as a concealment (see **3.11 Concealment**).

Otherwise, conspiracy is not criminalised in the same terms as in the US, but a similar offence is committed by "any person who takes part in an association or a group of three or more people

with the purpose of committing an offence" (Section 210 of the Criminal Code). In that case, the defendant shall be punished with imprisonment from three to ten years, for the mere fact of being a member of the association, independent of whether or not the crimes were committed. The "head or organiser" is subject to imprisonment for no fewer than five years.

3.13 Money Laundering

Since 2012, money laundering has been punished as an autonomous offence, according to Sections 303-306 of the Criminal Code. Also, self-laundering is criminalised, and all offences are admitted as predicate offences of money laundering.

According to Section 303.1 of the Criminal Code, any person who converts, transfers, manages, sells, charges, disguises or in any other way puts in the market goods amounting to more than ARS300,000 that originated in a previous illicit act, with the possible consequence of those goods acquiring a lawful appearance, shall be punished with a prison sentence ranging from three to ten years and a fine. According to Section 303.4 of the Criminal Code, the same assumption will be considered a "minor" money laundering offence (with imprisonment from six months to three years) if the amount of involved goods is less than ARS300,000.

As stated by the Argentine Constitution and the criminal procedure regime, the burden of proof is always on the accuser. The law also establishes that, in order to prove money laundering, a predicate "illicit act" must be demonstrated. In this regard, the prosecutor has to determine the existence of a previous illicit act that has resulted in the acquisition of assets or money. The probable-cause standard is sufficient to prove this element, which means that no final ruling or sentence is required to prove the predicate offence.

Additionally, it is necessary to prove the mens rea of the accused of money laundering, as the crime requires intent (purposely or knowingly).

Apart from the criminal law regulation, there is a specific Law No 25,256 (amended by several acts, mainly Law No 26,683) to prevent money laundering, which has also created an administrative authority to control a whole system for Anti-Money Laundering and Countering Financing of Terrorism (the AML/CFT Law). In the AML/CFT Law, several financial institutions and other business (21 different kinds of activities or groups of professionals) are considered "obliged subjects" so have been placed under strict anti-money laundering obligations, such as controlling their client profile, monitoring their economic activity and reporting any suspect transaction to the Financial Information Unit (FIU).

At the same time, the law establishes the FIU as the main administrative authority to enforce the preventive regime, and to impose sanctions on those obliged subjects who do not comply with the reporting obligations or who fail to maintain confidentiality in such matters. The FIU also enacts specific regulations for each obliged subject, in which it details the obligation for each activity. Thus, there are many FIU resolutions in that respect.

The FIU is responsible for evaluating any infraction of the anti-money laundering regime and imposing the corresponding fine. The administrative process consists of a written proceeding (detailed communication of the accused infraction, the defendant's deposition, production of evidence, closing arguments). The final ruling of the FIU 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. The duty of financial confidentiality must be unconditionally preserved, unless a judge's order deems otherwise. Breaching this duty is punishable with prison and a fine ranging from ARS50,000 to ARS500,000.

Finally, any failure related to formal obligations (such as collecting due information on know-your-client requirements) is punishable with a fine of between ARS10,000 and ARS100,000. Failure to report a suspicious operation (SOR) shall be punished with a fine of one to ten times the total amount of the assets involved.

4. Defences/Exceptions

4.1 Defences

Argentine law does not provide any specific defence for white-collar crimes, but general defences for individual criminal liability may apply. In this regard, a defendant may argue personal circumstances as recognised in Section 34 of the Criminal Code to exclude his or her liability – for instance, error or ignorance for which he or she is not responsible, coercion or threat, discharge of duty or the lawful exercise of a right.

As previously mentioned, a comprehensive and adequate compliance programme may contribute as a mitigating circumstance, but it will not automatically prevent the corporation or individual from any prosecution or conviction on white-collar crimes. The corporation can be excluded from penalty if, in addition to having an adequate compliance programme in place, it self-reports the crime according to Section 9 of Law No 27,401 on Criminal Corporate Liability and Section 60 of Law No 27,442 on Antitrust (see **2.4 Internal Investigations** and **4.4 Whistle-Blower Protection** for further information on immunity).

In investigations on tax frauds, the full payment of the accused amount, with interest, could sometimes operate as a defence to cancel criminal liability.

In addition, in August 2020, regarding the context of COVID-19, Congress passed Law No 27,562, approving a tax moratorium for corporations. It establishes that, if the claimed amount is fully cancelled by the taxpayer, charges for tax fraud are dismissed.

4.2 Exceptions

In Argentina, there are no industries or sectors that are exempt from white-collar crime restrictions; there is neither the minimis exemption in the federal procedure regime, nor in the law on white-collar crime. In money laundering and tax fraud, a minimum amount of money must be involved in order for the offence to be criminalised (ARS300,000 and ARS1,500,000, respectively). Offences below this amount shall not be punished but could be covered by civil sanctions.

Certain provinces' criminal procedure codes and the new Section 34 of the Federal Criminal Procedure Code (in force from November 2019) allow the prosecutors to decide not to investigate certain minor cases, but this decision is based on the prosecutor's criteria and the principles of the adversarial system; it is not legislated as a defendant's exception.

4.3 Co-operation, Self-Disclosure and Leniency

According to Law No 27,304, the sentence of the defendant shall be reduced if he or she provides accurate and verifiable information to avoid or prevent the perpetration of a crime, clarifies the purpose of the investigation, reveals the identity of other offenders and discloses significant information that contributes to expediting the investigation or revealing the location of victims, assets or proceeds, amongst other matters. Similar regulations are set forth for legal entities by Section 16 of Law No 27,401.

As for corporations, Section 9 of Law No 27,401 on Criminal Corporate Liability and Section 60 of Law No 27,442 on Antitrust both establish immunity for legal entities that self-report (see **2.4 Internal Investigations** for further information on immunity). In both cases, the self-report must be "spontaneous" – that is, not motivated by a state investigation. Additionally, the fulfilment of a compliance programme is required before the crime is committed.

4.4 Whistle-Blower Protection

Section 13 of Law No 27,304 establishes a whistle-blowers' programme for anyone who gives additional information to the investigation related to the proceeds of crime. A reward is established, related to the assets seized. Similar elements are set forth in Decree 62/2019 on non-conviction forfeiture of assets.

There are no direct regulations on whistle-blower protection. Law No 27,401 on the criminal liability of corporations requires in Section 23 that corporations should consider implementing whistle-blower protections in order to have an appropriate compliance programme in place. The Anti-Corruption Office has issued some guidelines on this matter.

5. Burden of Proof and Assessment of Penalties

5.1 Burden of Proof

The public prosecutor and parties acting as "private prosecutors" (see **2.1 Enforcement Authorities**) have the burden of proof to obtain a guilty sentence, while the defendant has the burden of proof of any affirmative defence. Trial judges must always rule on the basis of "innermost conviction"; if there is a reasonable doubt, the defendant must be acquitted.

5.2 Assessment of Penalties

According to Section 41 of the Criminal Code, upon sentence the court must analyse the subjective and objective circumstances of the individual accused. Before passing a sentence, the magistrate must take direct knowledge of the defendant, the victim and the circumstances of the event to the extent required for each case. As for corporations, Law No 27,401 sets forth in Section 8 that the judge should consider the conduct of the corporation before and after the crime was committed – for instance, whether an appropriate compliance programme was implemented, and whether the crime was investigated and mitigated.

Durrieu Abogados is the largest law firm in Argentina, specialised in criminal law, white-collar crimes and asset recovery, whether as defence counsels or as private prosecutors on local and international cases dealing with fraud, corruption, cybercrimes, tax crimes, money laundering, smuggling, anti-piracy and environmental, among others. The firm also has an extensive network of affiliates throughout the country and abroad, making it possible to provide individuals and corporations with a comprehensive assistance on any matter, both nationally and internationally, in either English, French or Spanish. The law firm is a member of FraudNet, the International Chamber of Commerce's network of lawyers specialised in anti-fraud and asset recovery, and is recommended by the American and French Foreign Affairs Offices in Argentina.

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