

Argentina

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International anti-corruption conventions

- 1** To which international anti-corruption conventions is your country a signatory?

Argentina has signed –without reservations – the following anti-corruption conventions:

- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Money Laundering 1988, Law No. 24.072, passed in April 1992;
- the Inter-American Convention against Corruption (IACAC) 1996, Law No. 24.759, passed in 1997;
- the Convention on Combating Bribery of Foreign Officials in International Business Transactions (OECD Anti-Bribery Convention) 1997, Law No. 25.319, passed in 1998;
- the United Nations Convention for the Suppressing of the Financing of Terrorism 1999, Law No. 26.024, passed in March 2005;
- the United Nations Convention against Transnational Organised Crime 2000, Law No. 25.632, passed in August 2002;
- the Inter-American Convention against Terrorism and Money Laundering 2002, Law No. 26.023, passed in March 2005;
- the United Nations Conventions against Business Corruption 2003, Law 26.097, passed in June 2006.

Foreign and domestic bribery laws

- 2** Identify and briefly describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The bribery of foreign public officials is prohibited and penalised in section 258(b) of the Argentine Criminal Code (ACC), (text incorporated by Law No. 25.825).

Section 258(b) states that any person who offers or gives a public official from a foreign state or from an international public organisation, personally or through an intermediary, money or any object of pecuniary value or other gifts, promises or benefits, for his or her own benefit or for the benefit of a third party, for the purpose of having such official do or not do an act related to his or her office or to use the influence derived from the office he or she holds in an economic, financial or commercial transaction, shall be punished with imprisonment from one to six years and will be disqualified for life from any public office.

The bribery of domestic public officials is prohibited by sections 256 to 259 of the ACC.

The ACC punishes both the citizen who bribes the public officer (passive corruption) and the public domestic officer who receives it (active corruption). The punishment is increased when the public officer is a judge, public prosecutor or any other per-

son related to the justice department.

The crime can be committed in two different ways. First, when a public official receives money or any other object of pecuniary value or accepts a promise of such things. Second, when someone asks a person to pay him or her or give any kind of gift to unlawfully exert influence on other public officers (unlawful lobby).

FOREIGN BRIBERY

Legal framework

- 3** Briefly describe the individual elements of the law prohibiting bribery of a foreign public official.

The ACC punishes not only the giving of money or other benefits to a public officer from a foreign state or from an international public organisation but also offering those benefits to an officer. The law foresees two kinds of actions: to ‘give’ or to ‘offer’ and both are considered to be bribery. The same punishment shall be imposed on any person or public officer who perpetrates those actions.

The bribery can be committed ‘personally’ or by an ‘intermediary’. The bribery may involve money, any object of pecuniary value or any other kind of gift or benefit. Even the promise to a foreign public officer is enough to commit the crime. In addition, the benefit could be for the officer or a third party.

Finally, bribery must have a specific purpose: to have the officer do or not do an act related to his or her office or to unlawfully use his or her influence in an economic, financial or commercial transaction.

Definition of a foreign public official

- 4** How does your law define a foreign public official?

Section 77 of the ACC defines ‘public official’ as any person who temporarily or permanently discharges public functions, whether as a result of an election or by appointment by a competent authority. According to the ACC, a foreign public officer refers not only to a public officer from a foreign state but also to a public officer from an international public organisation.

Travel and entertainment restrictions

- 5** To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

Any kind of objects of pecuniary value or other benefits such as gifts, favours or even promises are prohibited.

Facilitating payments

- 6** Do the laws and regulations permit facilitating or 'grease' payments (ie, small payments to officials for performing non-discretionary duties)?

The law does not allow any kind of 'grease' payments, whatever the amount represents. Section 266 of the ACC punishes illegal demands by which a public official illegally abuses his or her office, unduly requests or demands the payment or delivery of any tax, fee or gift or charges any higher fee than he or she is authorised.

The law does not prohibit public donations to public entities or institutions as long as such donations are legally documented.

Payments through intermediaries or third parties

- 7** In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

The law prohibits any kind of payments to foreign public officials in any circumstances, whether they are made personally or by intermediaries or third parties.

Penalties and sanctions

- 8** What are the penalties and sanctions for individuals and companies violating the foreign bribery laws and regulations?

The penalty for individuals who bribe a foreign official is imprisonment from one to six years. If the person involved in the bribery of a foreign official is a domestic public official, the penalty is also disqualification for life from public office.

No sanctions for companies violating foreign bribery laws and regulations can be enforced under Argentine law. In the Argentine legal framework, corporations and any other juridical persons are not criminally liable.

Liability

- 9** Can both individuals and companies be held liable for bribery of a foreign official?

Only individuals can be held liable for bribery of a foreign official. Under Argentine law, only individuals can be prosecuted for the commission of a crime.

Civil and criminal enforcement

- 10** Is there civil and criminal enforcement of your country's foreign bribery laws?

In Argentina, foreign bribery is a criminal offence and enforced according to section 258(b) of the ACC.

Additionally, civil law prohibits and punishes bribery and establishes the legal liability of such conduct. For instance, section 274 of the Argentine Companies Law (Law No. 19.550) establishes that directors have unlimited liability before the company, shareholders and third parties, for their unlawful behaviour in the running of the company violating their duties, according to section 59, or for violating the law or by-law, or for any other damage caused intentionally or by recklessness or negligence.

In addition, under the criminal Argentine system, the accused will also face civil consequences, such as disqualification from civil acts or exercising of political rights.

Agency enforcement

- 11** What government agencies enforce the foreign bribery laws and regulations?

Domestic and foreign bribery laws and regulations are enforced by the following government agencies:

- the Financial Information Unit (*Unidad de Información Financiera*);
- the Anti-Corruption Office (*Oficina Anticorrupción*);
- the State Prosecutor's Office in charge of administrative investigations (*Fiscalía de Investigaciones Administrativas*);
- the Superintendence of Corporations (*Inspección General de Justicia*, in the city of Buenos Aires); and
- the National Securities Commission (*Comisión Nacional de Valores*).

Patterns in enforcement

- 12** Describe any recent shifts in the patterns of enforcement of the foreign bribery laws and regulations.

By Law No. 26.097, passed in June 2006, Argentina approved the United Nations Convention against Private Corruption, approved in December 2003.

This document includes: 'corporate governance' measures such as codes of conduct, asset declarations by public employees, fair and equitable systems for public procurement, promotion of civil society participation in the struggle against private corruption. It also criminalises transnational bribery and unlawful enrichment. It provides for broad law enforcement cooperation between the signatories, which includes, as in the previous conventions, the elimination of bank secrecy as an obstacle to such cooperation.

Argentina has also ratified the OECD Anti-Bribery Convention, approved in Argentina by Law No. 25.319 in 2000 and the IACAC, approved by Law No. 24.759.

Prosecution of foreign companies

- 13** In what circumstances can foreign companies be prosecuted for foreign bribery under your legal system?

No company, whether domestic or foreign, can be prosecuted for foreign bribery under Argentine law. Criminal liability is only for physical persons and not juridical persons.

Self-disclosure of violations

- 14** Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

There is no mechanism in Argentina for companies to disclose violations in exchange for lesser penalties. The only exception is the Criminal Tax Procedure (section 16 of Law No. 24.769).

Dispute resolution

- 15** Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

Under Argentine law, when taking notice of a possible crime of any kind including bribery, the criminal justice is enforced to investigate. Enforcement cannot be achieved by any other method. Alternative means such as 'probation', regulated by section 76(b) of the ACC, cannot be applied for crimes where the punishment exceeds a term of more than three years' imprisonment.

Recent decision and investigations

- 16** Identify and briefly summarise recent landmark decisions or investigations involving violations of your laws prohibiting bribery of foreign officials.

In February 2007, Interpol Argentina arrested an Italian businessman, named Ottavio Quattrocchi, in Argentina who had been accused of corruption and conspiracy by Indian courts.

The Indian authorities accused Quattrocchi of receiving US\$7 million in bribes as a middleman in the Indian army's US\$1.2-billion purchase of artillery from Swedish arms makers 'Bofors'. It appears that Quattrocchi intervened in the transaction due to his friendship with the former Indian prime minister, Rajiv Gandhi, and his wife, the Italian, Sonia Gandhi. In February 2007, the Indian Embassy in Argentina requested the Argentine criminal courts for Quattrocchi's extradition. Although India has not signed an extradition treaty with Argentina, the foreign office department has stated that if the request meets all formalities the demand will be approved.

DOMESTIC BRIBERY

Legal framework

- 17** Briefly describe the individual elements of the law prohibiting bribery of a domestic public official.

The ACC prohibits the bribery of public officers and punishes different conduct.

Section 256 punishes any public official who personally or by an intermediary, receives money or any other gift or even accepts any promise directly or indirectly of such benefits to do or not do something in relation to his or her duties.

According to the ACC, the most important elements of bribery are that:

- it can be committed by a public official personally or by an intermediary;
- the conduct involves receiving money or other gifts or even accepting directly or indirectly a promise of such benefits;
- the money or gift is given with the purpose of the official doing or omitting to do something related to his duties.

Section 256(b) of the ACC sets forth provisions regarding 'improper lobbying'. This section states that anyone who requests or receives money or any other gift or accepts a promise of such to exert unlawful influence on a public official will be punished.

Both crimes will receive a more severe punishment if the public official who receives the money or gifts is a member of the judiciary or the prosecutor's office or if the unlawful influence is intended to be exerted on them.

Section 258 of the ACC prohibits and punishes an individual responsible for paying, giving a gift or making a promise to a public official or giving such benefits to someone so that that person exerts influence on a public official. The punishment is higher if the public officer who receives the bribe or who is unlawfully influenced is part of the judiciary.

Prohibitions

- 18** Does the law prohibit both the paying and receiving of a bribe?

The ACC punishes the public official who receives the bribe (section 256) and the person who exerts unlawful influence on them (section 256(b)) and the individual who makes the payment in any of the mentioned cases (section 258).

Public officials

- 19** Are any public officials not covered or accorded different treatment under these laws?

As stated in questions 17 and 18, the punishment for receiving a bribe is higher if the public official is a judge or part of the prosecutor's office. Likewise, the punishment for the individuals who pay a bribe or pay an intermediary for his or her unlawful influence is also more severe if the public official has the mentioned qualities. In addition, if the person who pays the bribe is a public official, the punishment will also include disqualification.

Public official participation in commercial activities

- 20** Can a public official participate in commercial activities while serving as a public official?

Whether a public official can participate in commercial activities depends on the office of the public official. For instance, a judge or public prosecutor is not allowed to participate in any kind of commercial activity, except being university professors. A minister or state secretary could practise commercial activities if such activities do not interfere with their public activities.

Each government agency rules and regulates the incompatibilities for a public official depending on his or her duties and responsibilities. In all matters, a public official can never take advantage of his position for commercial or private activities. There is a presumption that a public official can never participate in commercial or private activities related to the public position he represents.

Section 265 of the ACC states that any public official who shows any interest for his or her own benefit or for the benefit of a third party, in a contract or transaction which by reason of his or her office he or she has intervened in, shall be punished with a term of imprisonment from between one and six years and will be disqualified from public office for life.

Travel and entertainment

- 21** Describe any restrictions on providing domestic officials with gifts, travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

Under Argentine law there are no specific restrictions regarding the provision of gifts, travel or expenses to domestic officials. Section 258 of the ACC states that public officials shall be punished if they accept, while in public office, any gift by reason of their office. The law is clear: public officials cannot accept gifts of any kind by reason of their office while they are in duty. Both receiving and providing such benefits are prohibited.

Gifts and gratuities

- 22** Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

No gifts of any kind or gratuities are allowed. Only public donations can be made for a public institution or a public entity and these must be legally documented.

Private commercial bribery

- 23** Does your country also prohibit private commercial bribery?

The ACC also punishes private commercial bribery when it constitutes an economic detriment. Section 173.7 establishes that punishment (imprisonment from one month to six years) shall be

imposed in the case of fraud, to any person who has the administration or care of goods of pecuniary interests which belong to another person and, with the purpose of obtaining an unlawful gain for him or herself or a third party or to cause damage, violating his or her duties damages such interests conferred upon him or her or makes excessive expenses to the detriment of the person he or she represents.

This crime of fraudulent administration occurs when one of the parties involved acting on behalf of another party violates his or her duties requesting a private bribe, that damages the interests of his empowered.

Penalties and enforcement

24 What are the penalties and sanctions for individuals and companies violating the domestic bribery laws and regulations?

The penalty for individuals for domestic bribery or improper lobbying is imprisonment from one to six years. If the gift is given or offered to a magistrate or the state attorney's office or is made to make use of their influence, the punishment shall be imprisonment for a term between two and six years. No sanctions can be imposed on companies.

Facilitating payments

25 Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

The domestic bribery laws must be applied to any kind of bribery, whether it is an important payment or gift or just a 'grease' payment or facilitating payment.

Recent decisions and investigations

26 Identify and summarise recent landmark decisions and investigations involving violations of domestic bribery laws, including any investigations or decisions involving foreign companies.

In February 2007, a federal criminal judge indicted six national senators for receiving a payment in excess of US\$4 million to pass a national labour law (passive bribery). A former labour minister of Argentina and the Chief of the Intelligence Services are accused of paying the bribe (active bribery).

FINANCIAL RECORD-KEEPING

Laws and regulations

27 What laws and regulations exist requiring accurate corporate books and records, effective internal company controls, periodic financial statements and external auditing?

The main regulations are provided by the Argentine Commerce Code, the Argentine Companies Law No. 19,550 (ACL), mandatory resolutions issued by the Superintendence of Corporations (*Inspección General de Justicia*) and the Transparency Decree No. 677/2001 issued by the National Securities Commission (*Comisión Nacional de Valores*), which regulates the public offering of securities.

Section 55 of the Argentine Commerce Code establishes that the accounts must accurately show the real situation of a company or business at that time.

The ACL states the items that all account records of a company must include. The ACL also regulates the different corporate governance agencies that each company must have.

For example, public limited companies must name an internal controller (*síndico*), a function that can only be carried out by a lawyer or accountant, in charge of controlling the company administration. Public limited companies can also create a controlling board (*consejo de vigilancia*), in charge of supervising the activities of the board.

Section 59 of the ACL states that, as corporate managers, directors must act "with the loyalty and diligence of a good business man".

Section 12 of the United Nations International Convention against Corruption, passed in Argentina in 2006, includes a number of innovative rules for the private sector, namely that the signatory states must:

- adopt active policies to improve accountancy and rules of control in private matters and provide sanctions in the case of violation;
- promote cooperation between the governance agencies who enforce the law and private companies;
- include conduct codes for the correct, accurate and honourable run of economic activities and any other related activities;
- prevent the unlawful grant of subsidies or authorisation by the public authority for commercial activities;
- regulate restrictions for the hiring of ex public officials in private activities after their resignation in areas strictly related to duties carried out while in public service;
- promote enough internal account controls and auditing to prevent and discover acts of corruption in all private companies.

Section 12 also provides examples of situations that must be prohibited, such as the existence of non-registered accounts.

Prosecution under financial record-keeping legislation

28 Are such laws used to prosecute domestic or foreign bribery?

The laws mentioned in question 27 provide the duties and responsibilities for those who run a company. Different civil sanctions can be imposed on directors or managers. The ACC states the different bribery-related crimes that shall be punished.

Disclosure of violations or irregularities

29 To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Under Argentine law, only public officials are obliged to report the commission of a crime to the authorities. Individuals do not have a duty to report crimes. Section 301 of the ACC states that directors or managers who knowingly give their consent to perform acts contrary to the laws or by-laws shall be punished with a term of imprisonment between six months and two years. According to the ACL, a director or manager who is informed that an illegal decision is about to be taken by the board, must give written notice of his or her disagreement or inform the controller or receiver about this.

The anti-money laundering legal framework regulated by Law No. 25.246 states, in section 20, the public and private corporations that have a duty to report suspicious transactions to the Financial Information Unit.

Penalties and sanctions for accounting violations

30 What are the penalties and sanctions for violations of the accounting laws

Update and trends

In February 2007, a federal criminal judge decided that nine defendants, former public officials, involved in a criminal investigation would have to attend a public trial to determine if they were responsible for committing the crime of bribery.

The crimes investigated took place seven years ago when according to the prosecution a number of senators received payments (more than US\$4 million) to vote and

pass a national law. The accused parties are six former senators, including the ex-president of the senate, a former labour minister, the state secretary – Chief of the National Intelligence Services – among others. The senators are accused of having received a payment to pass a law (passive bribery). The other defendants are accused of paying the bribe (active bribery).

and regulations associated with the payment of bribes?

Section 300.3 of the ACC states that any director or manager who certifies or approves an untrue balance sheet or profit and loss statement or their respective reports, or distorts the truth regarding facts which are important for the members' understanding of the financial situation of the company, shall be punished with a term of imprisonment from between six months and two years.

The same punishment will be imposed on directors or managers who give their consent to perform acts contrary to the laws from which any harm can result (section 301).

In the case of private commercial bribery, section 173.3 of the ACC stipulates that the punishment shall be a term of imprisonment between one month and six years.

Deductibility of domestic or foreign bribes

31 Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

The penal tax regime in Argentina (section 3 of Law No. 24,769) punishes with a term of imprisonment between one and six years, any person who, by means of misleading statements, fraudulent concealment or any other deceitful device, obtains approval to receive the benefit of any tax exemption, reduction or repayment. Accordingly, any reduction or exemption of tax payment obtained by deducting the domestic or foreign bribes shall be punished as a crime.

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