THE INTERNATIONAL INVESTIGATIONS REVIEW

Seventh Edition

Editor
Nicolas Bourtin

THE LAWREVIEWS

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CONTENTS

PREFACE

In the United States, it continues to be a rare day when newspaper headlines do not announce criminal or regulatory investigations or prosecutions of major financial institutions and other corporations. Foreign corruption. Healthcare, consumer and environmental fraud. Tax evasion. Price fixing. Manipulation of benchmark interest rates and foreign exchange trading. Export controls and other trade sanctions. US and non-US corporations alike, for the past several years, have faced increasing scrutiny from US authorities, and their conduct, when deemed to run afoul of the law, continues to be punished severely by ever-increasing, record-breaking fines and the prosecution of corporate employees. And while in past years many corporate criminal investigations were resolved through deferred or non-prosecution agreements, the US Department of Justice recently has increasingly sought and obtained guilty pleas from corporate defendants. With the new presidential administration in 2017 comes uncertainty about certain enforcement priorities, but little sign of an immediate change in the trend toward more enforcement and harsher penalties.

This trend has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in multiple countries increasingly compound the problems for companies, as conflicting statutes, regulations and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. And while nothing can replace the considered advice of an expert local practitioner, a comprehensive review of the corporate investigation practices around the world will find a wide and grateful readership.

The authors of this volume are acknowledged experts in the field of corporate investigations and leaders of the bars of their respective countries. We have attempted to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a realistic option for a corporation to defend itself at trial against a government agency? And how does a corporation manage

the delicate interactions with the employees whose conduct is at issue? *The International Investigations Review* answers these questions and many more and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its seventh edition, this volume covers 23 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gift of time and thought. The subject matter is broad and the issues raised deep, and a concise synthesis of a country's legal framework and practice was in each case challenging.

Nicolas Bourtin
Sullivan & Cromwell LLP
New York
July 2017

Chapter 3

ARGENTINA

Manuel Beccar Varela, Maximiliano D'Auro, Francisco Zavalía and Tadeo Leandro Fernández[1]

I INTRODUCTION

In Argentina, corporations can be held criminally, administratively and civilly liable. Consequently, different Argentine judicial authorities, regulators and law enforcement agencies are empowered to investigate and bring proceedings in relation to corporate misconduct.

The main provisions under criminal law that govern and punish the perpetrators of crimes related to corporate conduct are the Argentine Criminal Code (ACC) and criminal laws, which are applicable to the entire Argentine territory. The enactment of the ACC is an authority specifically delegated by the provinces to the national government in the national Constitution, and thus the provinces cannot issue regulations that supersede it. Federal and local law enforcement agencies and courts are responsible for the investigation and prosecution of crimes. In this regard, the national Criminal Procedure Code (CPC) applies in the courts of the city of Buenos Aires and in federal courts all across the country and local criminal procedure codes apply in each of the 23 districts, called provinces, in which the country is divided.

Within the criminal framework, there are various government agencies that have supervisory responsibilities and seek to prevent the commission of corporate crime, such as the Argentine Central Bank (BCRA); the Financial Information Unit (UIF); the Federal Tax Authority (AFIP); the General Inspection of Justice (IGJ); the National Securities Commission (CNV); the National Superintendence of Insurance (SSN); and various offices and agencies of the National Judicial Power and the Public Prosecutor.

Within the Office of the Public Prosecutor there is a specific department specialising in this type of crime called the Office of the Prosecutor for Economic Crime and Money Laundering (PROCELAC).

Corporate conduct can also give rise to administrative liability. Several laws and regulations set forth penalties, such as warnings, fines, temporary or permanent disqualifications, and suspension or revocation of licences, among others. The main regulations are the Financial Entities Act; the Capital Markets Act; the Anti-Money Laundering and Counter Terrorist Financing (AML/CTF) Act; the Antitrust Act; the Environmental Acts; the Tax Regulations; the Customs Code; the Foreign Exchange Regulations; and the Supply Act, among others.

Additionally, corporate conduct can also give rise to civil liability. Civil liability requires damage to a certain person to occur, and only that person or their agent or successor can

1 Manuel Beccar Varela and Maximiliano D'Auro are partners and Francisco Zavalía and Tadeo Leandro Fernández are senior associates at Estudio Beccar Varela.

bring a claim. Attempts to damage are not punishable. Liability in this area can arise under tort, through the fundamental principle of *alterum non laedere*, which precludes individuals from harming others. This principle is set out in Section 19 of the Argentine Constitution and has been expressly regulated in the Argentine Civil and Commercial Code.

In Argentina, a distinction must be made regarding dawn raids between (1) on-site inspections carried out by administrative (non-judicial) authorities without a search warrant, such as tax authorities, anti-money laundering authorities, financial regulators, etc. and (2) search warrants issued by a judicial court.

In procedures like those mentioned in (1), the administrative authorities – provided that they do not have a valid search warrant – do not have power to search and seize documents, IT systems, etc. Although they may show up unexpectedly, they will normally require the company to provide certain documentation (basically, documents the company is legally obligated to keep in good form, such as accounting records, corporate books and ledgers, payroll registrations, etc., depending on the authority carrying out the procedure). Depending on the specific regulations applicable, if part of the information is not available, the authorities can leave a list of the required information and documents and notify the company that such materials must be made available before a certain deadline, at which time they can come back and finalise the inspection. These procedures are normally easier to handle, given that the authorities are normally more willing to give some time to the company to gather and deliver the required information.

On the other hand, procedures where a valid search warrant has been issued are normally more difficult to handle. If a search is ordered by a judge within the framework of a criminal investigation, the procedure will be performed by the judge or any of his or her clerks or officers and police officers. They will show up without any kind of prior notice. They must show the search warrant, which must be signed and stamped by a judge. A copy of this order is normally delivered to the 'person in charge' at the time the procedure is taking place.

Regarding special investigative techniques, under the CPC, orders for wiretaps can be obtained from judges for use in investigations and prosecutions (Section 236). Additionally, the AML/CFT Act sets forth that the judge in charge of criminal proceedings for the AML crime may:

a suspend the warrant of arrest of one or more persons;

b postpone within the Argentine territory the interception of money remittances or shipments of property from unlawful origin;

c suspend the seizure of instruments or effects of the crime under investigation; and

d postpone the adoption of other restraining or evidentiary measures.

The judge in charge may also suspend the interception in the Argentine territory of money remittances or shipments of property or other effects related to crimes and allow their exit from the country, provided that the judge is certain that their monitoring shall be supervised by the judicial authorities of the country of destination.

Finally, it is worth mentioning that Argentina has signed and ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the Inter-American Convention against Corruption (IACAC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention), the United Nations Convention against

Transnational Organized Crime (Palermo Convention), the United Nations Convention against Corruption (UNCAC) and the International Convention for the Suppression of the Financing of Terrorism, among others.

II CONDUCT

i Self-reporting

Pursuant to Argentine law, there is no legal obligation for corporations to self-report when they discover internal wrongdoing. Moreover, there are no benefits such as leniency or immunity for businesses that self-report.

However, self-disclosure is very important in Argentine tax law. Taxpayers can be exempted from criminal punishment by self-disclosure in certain conditions.

In addition, certain entities and agents under the supervision of the CNV have the obligation to disclose significant issues (i.e., any fact or situation that could substantially affect the placement of securities of the issuer, the course of the securities' negotiation or the development of its activities).

Within the perspective of criminal procedure law, only certain public officers (judges, prosecutors, court officials, ministry officials, notaries and other public authorities) have the duty to report any crime they are witnesses to or those reported to them (Section 177 CPC). This means that, regarding this issue, no person or private entity has an obligation to report or refer to the criminal courts when they have relevant information they are aware of due to their activities, with the exception of AML/CTF laws and regulations and foreign exchange regulations.

Notwithstanding the above-mentioned, under AML/CTF laws and regulations, certain activities, businesses and professions have a legal obligation to report suspicious transactions and provide the UIF with the documents gathered from their customers, in compliance with FATF international standards.

According to the Criminal Foreign Exchange Regime Law 19,359, any transaction that does not comply with the foreign exchange regulations is a criminal offence and, to the extent the subjects involved are found to be guilty by a competent judicial court they can be subject to penalties that range from fines, suspensions from operating in foreign exchange transactions, to imprisonment in certain rare cases. Entities authorised to operate in the foreign exchange market are responsible for verifying the compliance with all the applicable regulations for each concept and that all transactions are genuine. If an authorised entity carries out foreign exchange operations that do not comply with the applicable regulations, it could be sanctioned by the BCRA. For this reason, authorised entities are very strict when reviewing the documents related to each intended transaction. When an intervening entity detects the existence of a possible offence, the entity must inform the BCRA.

Additionally, on 2 November 2016 Law No. 27,304 was issued, which amends the ACC. While Argentina already allowed plea bargaining for certain offences, the new law is primarily intended to cover corruption investigations. Section 41 *ter* of the ACC, as amended by Law No. 27,304, sets forth that participants or authors of certain crimes could obtain a criminal scale reduced to that of an attempt if they provide accurate and verifiable information. Defendants must provide information on people whose criminal responsibility is equal to or greater than theirs. Furthermore, the information must refer only to the wrongful acts in which they participated. This amendment was primarily intended to boost corruption offences investigations: bribery and influence peddling; embezzlement of

public funds; negotiations incompatible with the exercise of public functions; solicitation; illicit enrichment of public officials; and fraud to the detriment of any public administration. Notwithstanding, the regime includes 'repentants' of certain drug trafficking crimes set forth in Law No. 23,737; customs offences; terrorist offences; some sex-related offences (corruption of minors, procuring, sexual exploitation); some kidnapping offences and human trafficking; illicit associations and 'crimes against economic and financial order', i.e., money laundering, terrorist financing, insider trading, market manipulation, crime of financial intermediation and bribery for employees or officials of financial institutions.

ii Internal investigations

In recent times there has been an increased emphasis on the need for companies to adopt corporate governance best practices. In Argentina, businesses may conduct their own internal investigations and there is no obligation to share the results with the government, apart from the general duty to testify. They can also engage external advisers, legal or audit firms to conduct such investigations.

If a company decides to run an investigation, it may obtain documents and oral evidence from its employees. This notwithstanding, it is important to point out that employees are protected by their constitutional rights, such as the right to privacy or the privilege against self-incrimination.

In addition, Section 153 of the ACC criminalises the conduct of uncovering or disclosing secrets, and guardianship of e-mails, which are inviolable as a general rule and can only be accessed with the consent of its holder or owner or any prior judicial authorisation. This general principle of e-mail inviolability is strictly applicable to private communications in personal e-mail accounts, but there is no consensus in scholarly opinion and case law about its application when it concerns corporate e-mails and company e-mail accounts, provided for labour matters by the employer with the employer's domain name. The reason for constitutional protection of the inviolability of correspondence lies in the employee's reasonable expectation of privacy. Thus, prior notification to the employee regarding the company e-mail account being a unique tool for work purposes reduces this reasonable expectation of privacy, and consequently monitoring of corporate e-mail could not be considered improper in terms of Section 153.

Therefore, when there is an agreement regarding supervisory power or e-mail monitoring (i.e., prior communication by the corporation and valid informed consent by employees) access to corporate e-mail in terms of Section 153 would not be considered improper, since there is no infringement on reasonable expectation of privacy in this scenario.

iii Whistle-blowers

In Argentina, whistle-blower reports of potential illegal conduct to government authorities are not common. There is no specific protection for whistle-blowers in Argentina and the authorities do not provide incentive programmes for whistle-blowers to come forward.

The CNV's regulations require that issuing companies set up a corporate governance code, which should encourage business ethics within the company. The corporate governance code should include, among others, the description of reporting mechanisms for employees, whether via personal or electronic means, 'ensuring that information transmitted meets high standards of confidentiality and integrity as recording and storage of information'. The CNV's regulations do not require protection from retaliation.

However, a legal system of witness protection is available, which is regulated by the National Programme for Witnesses and Suspects Protection created by Law 25,764. The system is intended for the protection of witnesses and defendants who have made an outstanding contribution to a judicial investigation under federal jurisdiction and are, therefore, in a risky situation. Such investigations can include investigations into:

a drug trafficking;
b kidnapping and terrorism;
c crimes against humanity committed in the period 1976 to 1983; and
d human trafficking.

This system does not reduce penalties, except in the case of crimes regulated by the Law of Narcotics No. 23,737, where cooperation can reduce penalties up to one-half of the minimum, or even exempt the defendant from penalties when, during the conduct or before the start of the proceedings, the defendant either reveals the identity of the participants in the crime; or provides information enabling the authorities to seize drugs, raw materials and other objects of the crime. In addition, Law No. 25,241 sets forth reduction of penalties to whomever contributes to the investigation of terrorist actions and money laundering (committed by individuals other than public officers).

Witness protection is more limited than whistle-blower protection as it does not offer protection from workplace reprisals. It is important to point out that the Labour Contract Act addresses unjust dismissal but not other forms of reprisal.

Despite the lack of specific regulations, many companies have established mechanisms in order to allow whistle-blowing, as well as hotlines.

III ENFORCEMENT

i Corporate liability

Historically, Argentine criminal law considered that only individuals can be held criminally liable, thus criminal liability in Argentine law is personal. A director is to be held liable if he or she committed a crime, with the intent of doing so, and in the event that such conduct is specifically indicated as a crime in the law.

First of all, it should be stressed that criminal liability – as a general rule – can only exist on an individual basis; that is, there can be no criminal charge against a legal entity or an organ thereof, with the exception of certain crimes, but even with these exceptions the criminal law penalties always rely on individuals' wrongdoings as there is no possibility of strict liability in criminal matters. The criminal charge is eminently subjective; thus, either a personal harmful intent or personal negligence must necessarily have existed in the administrator in order for him or her to be held liable.

Notwithstanding the aforesaid, the ACC includes specific rules that charge certain illegal conducts to certain persons, based on their performance as directors of companies. Several laws have been enacted to punish white-collar and other crimes that could be committed by a legal person. In this regard, corporate criminal liability has been established in Argentina for some currency exchange offences, tax and customs offences, AML/CFT offences, eco-financial order crimes, insider trading and other forms of securities fraud, antitrust and supply offences.

Accessory criminal penalties may be imposed when the criminal offence has been made on behalf, with the intervention or for the benefit of a legal entity.

The following are the relevant financial crimes of the ACC and the relevant criminal laws for corporations:

a frauds and scams (Sections 172 to 174, ACC);
b extortion or blackmail (Sections 168 and 169, ACC);
c fraudulent and negligent bankruptcy (Sections 176 and 177, ACC);
d fraudulent insolvency (Section 179, ACC);
e collusion with creditors (Section 180, ACC);
f false balance sheets and reports (Sections 300 and 309, ACC);
g money laundering (Sections 303 and 304, ACC);
h terrorist financing (Section 306, ACC);
i insider trading (Sections 307 and 308, ACC);
j manipulation of financial markets and misleading offers (Section 309, ACC);
k financial intermediation (Section 310, ACC);
l financial fraud (Section 311, ACC);
m financial bribery (Section 312, ACC);
n the Criminal Trade Mark Law (Law 11,723 and 22,362);
o the Foreign Exchange Criminal Law (Law 19,359);
p the Customs Criminal Law (Law 22,415);
q the Environmental Criminal Law (Law 24,051); and
r the Criminal Tax Law (Law 24,769).

In all these cases, except for negligent bankruptcy and hazardous waste crimes, the author's wilful misconduct is required, which at a minimum requires that the possibility of committing the crime was presented and the perpetrator was indifferent. Attempts are usually punishable.

In addition, legal persons can be held administratively liable (see Section I, *supra*). A proposed Criminal Code Reform Bill (the Anteproyecto) states in Section 4 that this criminal rule shall apply to acts committed by persons over 18 years old and those 'actions attributed to legal entities' resolving the issue of legal entities' criminal liability.

ii Penalties

Pursuant to Argentine law, corporations could be subject to administrative or criminal penalties for contravening relevant laws and regulations.

For example, Sections 304 and 313 of the ACC (such as the Foreign Exchange Criminal Law, the Customs Criminal Law, the Supply Act, the Environmental Criminal Law and the Criminal Tax Law) state that when the crimes have been performed on behalf, with the intervention or for the benefit of legal persons, then the entity shall be subject to the alternative or joint application of the following sanctions:

a a fine of two to 10 times the value of the involved assets;
b a total or partial suspension of activities, which may not exceed 10 years (ACC) or five years (the Criminal Tax Law);
c suspension from participating in bidding processes for public works or services or any other activity related to the national state, for a period that shall not exceed 10 years ACC) or five years (the Criminal Tax Law);
d cancellation of the legal entity when it has been created solely to the effect of committing the crimes, or when the commission of such crimes is its main corporate object;
e loss or suspension of any state benefits; and
f publication of an extract of the verdict at the expense of the legal entity.

Regarding administrative penalties, many regulators and agencies have special powers of supervision and enforcement. For example, banking activities are regulated by Law No. 21,526, as amended (the Financial Entities Act), which places the supervision and control of the Argentine banking system in the hands of the BCRA. This Law confers numerous powers on the BCRA, including the ability to grant and revoke licences to operate as banks; authorise the establishment of branches of Argentine banks outside of Argentina; approve bank mergers, capital increases and certain transfers of stock; set minimum capital; grant certain credit facilities to financial institutions in cases of temporary liquidity problems; and issue other regulations to properly enforce the Financial Entities Act. The BCRA has vested the Superintendence of Financial and Exchange Institutions (SEFyC) with most of its supervisory powers.

The BCRA performs formal inspections of all banking institutions for the purpose of monitoring compliance by banks with legal and regulatory requirements. If the BCRA regulations are breached, it may impose various sanctions depending on the seriousness of the infringement. These sanctions established under the Financial Entities Act range from warnings to fines and even the revocation of the financial institution's operating licence. Moreover, non-compliance with certain rules may result in the mandatory presentation to the BCRA of specific adequacy. The BCRA must approve these plans for the financial institution to remain operational.

At the federal level, according to the General Regime for Public Procurement (GRPP) and its Regulation (approved by means of Decree 1023/2001 and Decree 1030/2016, respectively) the following persons cannot enter into contracts with the public administration, among others:

a bidders who have been convicted for the commission of intentional crimes are disqualified for a period equal to twice the length of the sentence imposed for their crimes;

b companies that have been convicted abroad of bribery or transnational bribery practices under the terms of the OECD Convention will not be eligible for a period equal to twice the sentence; and

c individuals or legal entities that were included in the lists of debarred persons of the World Bank or the Inter-American Development Bank, as a result of corrupt practices referred to in the OECD Convention will not be eligible while such condition continues to exist.

iii Compliance programmes

In principle, judges and courts should consider the aggravating or mitigating circumstances specifically related to each case. They should take into account (1) the nature of the lawful action, the means used to execute it and the extent of damage and danger caused; and (2) the age, education, customs and the previous behaviour of the defendants, the motives that determined them to commit such crimes, the participation they have had, whether they are recidivists and personal conditions and the circumstances of time, place, manner and occasion to demonstrate their degree of dangerousness.

Covered institutions (see Section II.i, *supra*) must implement AML/CTF compliance programmes containing measures and policies to prevent money laundering and terrorism financing that are covered in the specific UIF resolutions for each class of compelled subjects.

Regarding AML and criminal tax law, Sections 304 and 313 ACC and Section 14 of the Criminal Tax Law set forth that judges could grade these punishments taking into

account failures to comply with internal rules and procedures; lack of vigilance over the activity of perpetrators and accomplices; the extent of the harm caused; the amount of money involved in the perpetration of the crime; and the size, nature and economic capacity of the legal person. In addition, punishments of subsections 2 ('temporary or total suspension of activities') and 4 ('cancellation of the legal entity') should not be imposed if the actions were indispensable to keep the entity, or public works or a specific service operational.

Notwithstanding this, the existence of a compliance programme could serve as a defence against criminal charges or mitigate the penalty, depending on the particular circumstances of the case.

Moreover, the Anteproyecto provides for judicial discretion in the 'criteria for determination of sanctions' in order to properly calibrate the penalties to impose. It sets forth that the judge shall take into account the degree of non-observance of rules and procedures, the degree of oversight, omission or failure of control over the activities of those involved and, in general, social importance and seriousness of the wrongful act. The judge will also take into consideration the possible cooperation, clarification of the facts, the subsequent spontaneous behaviour and the willingness to mitigate or repair the damage, or to resolve the conflict of those involved.

iv Prosecution of individuals

Pursuant to Argentine law, the way in which a company deals with an employee who is the defendant or is prosecuted will depend on the company's policies. It has to be taken into account that the criminal liability of legal persons will always rely on the unlawful conduct of individuals (unlike the Anteproyecto).

Ultimately, it is at the discretion of the company to cooperate with defendants. There is no law that prevents the company and individual from being represented by the same legal counsel. A company can pay its employee's legal fees.

It is worth mentioning that in certain cases, licensed companies (financial entities, insurance companies or brokers, stockbrockers, etc.) should take reasonable steps to ensure their representatives comply with relevant laws. For example, the BCRA's regulations provide authority to refuse to grant or to revoke a licence if the BCRA considers that directors, senior managers or shareholders of a financial institution have engaged in criminal activity.

IV INTERNATIONAL

i Extraterritorial jurisdiction

The ACC mainly follows the territoriality principle, that is, it applies to all crimes committed in Argentina, without distinguishing whether the criminal perpetrators are Argentine nationals or residents.

This general principle notwithstanding, Section 1 of the ACC sets forth two exceptions to the territoriality rule: it shall be applicable to any crimes whose 'effects must be produced in the territory of Argentina' and it also applies to 'crimes committed abroad by agents or employees of Argentine authorities while performing their duties'.

However, Sections 303 and 306 of the ACC concerning money laundering and terrorist financing provide that they will apply even when those crimes were committed outside the scope of the ACC when the fact that forms the basis for that crime had been punished in the place where it was committed.

ii International cooperation

Both the Argentine criminal justice authorities and administrative regulators cooperate closely with those in foreign countries. Law 24,767 has been in force in Argentina since 1997, and provides the foundation for the system of international legal cooperation on criminal matters. It provides the rules of procedure applicable for international legal assistance and extradition followed by Argentina.

In addition, in cases where there is no treaty binding Argentina with the requesting government, it establishes the conditions under which the assistance will be awarded, which are, in general terms: (1) the crime that motivates the extradition process cannot be a political crime; (2) the crime that motivates the extradition process cannot be exclusively envisaged by the military criminal law; and (3) the process that motivates the extradition could not show persecutory purposes for reasons of political opinions, nationality, race, sex or religion.

Assistance in criminal matters will be provided even if the offence that motivates the extradition process has not been provided in Argentine law.

In addition, several bilateral and regional international treaties have been entered into which provide rules for mutual assistance on criminal matters, including, for example, obtaining evidence.

Law 24,767 does not establish a specific mechanism concerning seizing assets. However, for this type of measure, which may affect rights protected by the Constitution (such as the right to property), the law sets out that an offence should be provided for under Argentine law and the order should be issued by a judge, for matters such as: (1) a house search; (2) surveillance of individuals; and (3) interception of correspondence or communications.

Argentina has entered into the UN Convention against Corruption through Law 26,097, which enables confiscation of proceeds of crime and property or other items used for offences under the Convention (Section 31).

There are no rules restricting compliance with investigations started in other countries where those acts are not being investigated in Argentina. The Extradition Law does provide for a 'national option'. This means that if the extradition of an Argentinean citizen is required, the citizen may opt to be placed on trial in Argentina (as long as a bilateral treaty does not provide otherwise). Finally, the Extradition Law restricts international cooperation in the field of political crimes.

Argentina is a full member of both the FATF and the Financial Action Task Force on Money Laundering in Latin America (GAFILAT). In addition, the UIF is a member of the Egmont Group. The exchange of information between the UIF, the BCRA, the SSN and the CNV and similar entities from other countries is regulated by UIF Resolution 30/2013. This Resolution mainly states that all requests for information shall be centralised by the UIF. As for cooperation with other countries, the UIF has signed memoranda of understanding for the exchange of information with many counterparts.

iii Local law considerations

Banking data is protected by secrecy and may only be disclosed by court order, pursuant to the constitutional principles. If any such information is obtained illegally, it will not be admissible in court.

Additionally, it is broadly accepted that lawyers can invoke professional secrecy before such requests in any civil and commercial proceedings.

It is worth mentioning that communications between clients and attorneys are privileged if they act in such capacity (i.e., in their professional practice). Regarding criminal

procedural law, Section 237 of the CPC impedes the seizure of letters or documents sent or delivered to attorneys for the exercise of their profession (other than the instruments or proceeds of crime). Also, it is necessary to point out that, according to Law No. 23,187, lawyers' firms or professional offices are inviolable. However, judges could issue a search warrant over law firms, and in such case the competent authority that ordered the measure shall give due notice to the corresponding Bar association, and the lawyer may request the presence of a member of the Bar during the search warrant.

V YEAR IN REVIEW

In December 2015, the Argentine government changed. The new administration promised to make the fight against corruption one of the main political goals of its administration. Regarding new legislation, a set of anti-corruption bills was introduced in Congress. Among them, there is great expectation about the Bill on Corporate Criminal Liability for cases of corruption that originally provided for effective collaboration agreements, compliance programmes, joint and several liability of controlling companies, successor liability and fines of up to 20 per cent of the corporate gross income for the previous year, among others. However, the bill is subject to a great debate and modifications. Another bill under consideration is the Asset Recovery Bill. Additionally, as was mentioned in Section II.i, *supra*, on 2 November 2016 Law No. 27,304 was issued, which is primarily intended to cover corruption investigations.

VI CONCLUSIONS AND OUTLOOK

Legal persons and their officers and directors are subject to increased scrutiny and prosecution by Argentine regulators and law enforcement agencies empowered to investigate and prosecute corporate wrongdoing. Even though the issue of criminal liability of entities is still widely discussed, more legal persons are being prosecuted or investigated and administrative sanctions are being imposed on them.

Consequently, in order to avoid or minimise the risk of corporate wrongdoing, companies should set up a wide range of mechanisms and procedures, such as codes of ethics and transparency policies; implement transparent processes that can be monitored for high-risk sectors of the company; practise due diligence concerning suppliers, and require the same processes and controls in accordance with the standards of transparency and quality of the company; designate and grant high powers to compliance officers that regularly report to headquarters; conduct regular internal and external audits through leading companies; have privacy policies in relation to work tools (e-mails, computers, etc.) that legally enable them to monitor and review those items without breaching constitutional rights and provide internal training courses; and hire outside consultants to provide legal and regulatory updates on emerging issues.

Appendix 1

ABOUT THE AUTHORS

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Manuel Beccar Varela is a partner at Estudio Beccar Varela. His practice areas include fraud and swindling, corporate fraud, cybercrime and piracy, foreign exchange controls, anti-money laundering, criminal tax, social security law, customs and international trade, environmental law, criminal trademark, antitrust, property crime, extradition and international criminal law, general criminal law and criminal procedure law. Mr Beccar Varela received his law degree from the University of Belgrano (1994) and a postgraduate degree in criminal law from Austral University (2003).

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Maximiliano D'Auro is a partner at Estudio Beccar Varela. He has wide experience in banking and financial law, advising both foreign and local financial institutions, not only on structuring complex financial transactions, but also on specific regulatory matters. In this field, Maximiliano has counselled and represented major financial institutions in matters related to the Financial Entities Act, the Public Offering Act and regulations issued by the Argentine Central Bank (BCRA) and the National Securities Commission (CNV). He also has a great deal of expertise in designing and implementing compliance programmes for prevention of money laundering and counter-terrorism financing. In addition, he focuses his practice on bank secrecy and personal data protection.

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