COMMERCIAL LITIGATION

INTERNATIONAL SERIES

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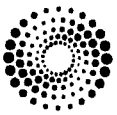

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ARGENTINA

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1. COURT STRUCTURE

1.1 How is the court structured? Does a specific court or division hear commercial claims?

The Republic of Argentina is a federal republic divided into a federal capital (the Autonomous City of Buenos Aires) and 23 provinces. Each province enacts its constitution, and has its own governors, legislators and judiciary.

The Judicial System in Argentina comprises the Argentinean National Supreme Court of Justice (Supreme Court) and lower courts at both the federal and provincial levels.

The Argentinean National Constitution (NC) establishes a dual judicial organisation: the Federal and Ordinary jurisdictions. The Federal justice system exercises its authority throughout the territory of the Republic of Argentina in specific matters referred to in federal laws, and without such limitation in the territories subject to the power of the national government. In turn, the Ordinary judicial courts handle cases within the City of Buenos Aires and provinces, and they acknowledge jurisdiction in all matters governed by common and local law.

In general, each jurisdiction has specific courts that cover different areas of law depending on the subject matter at stake. Thus, depending on the jurisdiction, there are civil courts, commercial courts, criminal courts, labour courts and so on, having different types of proceedings. Within each jurisdiction, there are first instance courts (headed by a judge) and a court of appeals (pluri-personal).

Solely as regards criminal matters, there is also a Federal Criminal Cassation Court. The Congress has recently passed Law No 26.835, which creates other cassation courts: the Federal and National Civil and Commercial Court; the Federal and National Social Security and Labour Court; and the Federal Administrative Court. These courts entertain cassation appeals, constitutional appeals and review appeals against final judgments issued by the courts of appeals. However, they are not yet in force.

Finally, the Supreme Court exercises its jurisdiction in the following situations:

- As an exclusive and original jurisdiction in all matters concerning ambassadors, ministers and consuls, or when a province is a party to the proceeding.
- In exceptional cases on appeals against lower courts' final judgments that are contrary to the NC and federal laws, or when the judgment is considered arbitrary.
- As third instance in cases where:
    - the nation is involved;
    - extradition of criminals is sought by foreign countries; or
    - matters that would give rise to maritime embargoes in wartime.

Thus, the intervention of the Supreme Court in a case is quite restricted.

2. PRE-ACTION

2.1 Are parties to potential litigation required to conduct themselves in accordance with any rules prior to the start of formal proceedings?

In some provinces in Argentina (including the Autonomous City of Buenos Aires), the parties are required to initiate a pre-trial mandatory mediation proceeding before bringing a judicial claim. The requesting party may choose between public or private mediation, the difference being whether the mediator is appointed by the parties or by the courts.

In both kinds of mediation, the proceedings are the same. As a first step, the appointed mediator will summon the parties to a first hearing in which the parties will have the opportunity to present their case.

If the parties reach an agreement, the mediator will issue a document that states the terms and conditions of such agreement.

If the parties do not reach an agreement, or if any party requires the termination of the mediation at any time, the mediation proceeding is closed, allowing the plaintiff to file the lawsuit before the competent court at a further time. Upon the closure of the proceeding, the mediator shall issue a document stating that the mediation proceeding is concluded. Such form is signed by the parties and the mediator.

2.2 Are there any time limits for bringing a claim? If so, what are they?

Yes, there are time limits for bringing a claim.

In those jurisdictions where mediation proceedings are mandatory, the time limits for bringing a claim (if there is any) are provided in the corresponding statutes on the matter. For example, in the City of Buenos Aires, the Law on Mediation and Conciliation (Law No 26.589) establishes that mediation proceedings expire one year after the conclusion of the proceedings if a judicial claim has not been brought. This has the consequence that the requesting party would then have to reinitiate the mediation proceeding. In those jurisdictions where mediation proceedings are not mandatory, a lawsuit may be brought to court at any time.

In both cases, however, the statute of limitations applicable to the claim must be taken into account. Currently, it will depend on the legal frame applicable to the relationship between the parties involved.

If there is a consumer relationship between plaintiff and defendant, the Argentinean Consumer Protection Law (Law No 24.240, CPL) would be applicable. In such a case, the statute of limitations would be three years.

The situation differs if the relationship is governed by the civil liability provisions of the Argentinean National Civil Code (NCC). In this case, the statute of limitations established for non-contractual liability will be two years (*section 4037*), while the statute of limitations provided for contractual liability will be ten years (*section 4023*).

There are other provisions in the NCC providing for specific statutes of limitations depending on the type of claim, for example:

- The statute of limitations for the action to request the partition of inheritance against the heir who has owned all or part of it in his own name is 20 years (*section 4020*).

- The statute of limitations for the action of the debtor to request security's restitution after the payment is made is 20 years (*section 4021*).

Nevertheless, the provisions on statute of limitations provided in the NCC are due to undergo a number of changes shortly. The Congress has recently passed the Argentinean New Civil and Commercial Code (Law No 26.994, NCCC), which implies broad and deep modifications to the current Civil and Commercial Codes. Said law also unifies both codes into one, and will replace the texts of the codes currently in force. It was initially provided that the NCCC would come into force on 1 January 2016. However, in December 2014, the Congress passed another law that advances the date of entry into force to 1 August 2015.

The NCCC provides, as a general rule, that the statute of limitations will be five years (*section 2560*), except there is a specific rule that provides a different one. In damages claims, the statute of limitations will be three years (*section 2561*).

3. PROCEDURE AND TIMETABLE IN CIVIL COURTS

3.1 How are proceedings commenced?

In order to file a complaint before the competent court, the plaintiff shall pay a filing fee and complete a form. The receipt of payment and the completed form, together with the complaint, shall be submitted before the corresponding court of appeals (civil, commercial, labour, and so on), which shall assign by lots the first instance court that will intervene, and shall give a name and a number to the court file.

The plaintiff shall then file the complaint before the first instance court. The complaint must include:

- All relevant facts.
- The underlying law, including case law and opinions of legal scholars, that is to serve as support for the plaintiff's position before the court.
- Contact information of the parties involved in the dispute, including name and address.
- The relief sought.
- The amount claimed.

All the evidence, such as documentary evidence, expert's opinion to be produced and witnesses to be summoned, must be proposed jointly with the filing of the claim. Documentary evidence must be joined to the claim. Only exceptionally is documentary evidence allowed to be filed afterwards.

If the preliminary requirements of the complaint are met, the first instance court will issue a resolution that the complaint has been duly submitted and the plaintiff is a party to the proceedings. The first instance court will also order that the defendant be summoned.

3.2 What are the main steps to trial, once a claim has been formally commenced? What is the usual timetable to trial?

The general structure of ordinary commercial and civil proceedings under the National Civil and Commercial Code of Procedure (NCCCP) consists of four main stages:

(i) The introductory stage.

(ii) The evidence stage.

(iii) The ruling stage.

(iv) The appeal stage.

The introductory stage comprises the filing of the complaint and the answer to the complaint, with the possibility for the defendant to submit a counterclaim at the same time. If the defendant files a counterclaim, the court shall notify the plaintiff about it so that the plaintiff may answer it.

The answer to the complaint forces the defendant to deny any disputed facts described in the claim. Documentary evidence must be joined to the answer. Facts that have not been challenged in the answer will be assumed to be undisputed by the defendant. Any document that has not been challenged in the answer will be deemed as undisputed by the defendant.

The defendant, when answering the complaint, must clearly specify the facts alleged as grounds for defence, and must fulfil the same requirements set forth in connection with the complaint.

All defences shall be included in the answer to the claim. Those which are of a predominately procedural nature, such as lack of jurisdiction, *lis pendens*, *res judicata* or a motion based on lack of standing to sue/be sued, may be treated and solved through a preliminary decision. The defendant may also request the incorporation of third parties or the consolidation of proceedings.

The first stage of the proceeding concludes when the complaint is answered, evidence is offered and procedural motions have been decided by the court. Ancillary matters related to the proceeding (for example, incorporation of third parties) shall also be resolved during this first stage of the proceedings.

Even when the court is responsible for setting the timetable for each of the stages, the parties have the legal duty to act to progress the proceedings or ask the judge to take the necessary measures to do so.

3.3 Is it possible to expedite the normal timetable to trial? If so, how?

Yes, it is possible to expedite the normal timetable and obtain a court decision faster than would otherwise be available through a "summary proceeding".

Summary proceedings are appropriate when:

- The amount in dispute does not exceed the sum of five thousand Argentinean pesos (AR$ 5,000).

- The claim is against an act or omission of an individual who, currently or eventually, infringes, restricts, alters or threatens with arbitrariness or illegality any right or guarantee explicitly or implicitly recognised by the NC, a treaty or law whenever it becomes necessary to urgently redress or immediate halt effects of the act.
- It is one of the other cases specially provided for in the NCCCP.
- The judge, in accordance with the powers provided for in the NCCCP, chooses this kind of proceeding, taking into account the nature of the matter, the circumstances of the case and the claims of the parties.

In this type of proceeding, some of the procedural steps are eliminated (for example, counterclaim, final allegations) and others are abbreviated. It is the court which can order this type of proceeding; the parties cannot choose the type of proceeding to follow even when there is an agreement in this regard.

In ordinary proceedings, it is also possible to have the court issue a judgment on some of the aspects of the dispute in advance. When the defendant submits special defences (for example, lack of jurisdiction, *lis pendens*, *res judicata* or a motion based on lack of standing to sue/be sued), those of them that are of a predominately procedural nature may be treated and solved through a preliminary decision.

4. DOCUMENTARY EVIDENCE

4.1 Are the parties obliged to search for, retain or exchange documentary evidence prior to trial?

Argentinean procedural law does not encompass the institute of "discovery", that is, allowing the other party access to all documents which have a reasonable relation to the matter at issue. Therefore, parties are not required to exchange relevant documents prior to trial.

Nevertheless, before the commencement of proceedings, parties may request from the court (i) preparatory measures and (ii) production of evidence in advance of trial.

With regard to preparatory measures, these can be requested by the parties and ordered by courts prior to parties' filing the claim. They are intended to "prepare" the proceeding by obtaining data, reports or specific information necessary to the submittal of the claim. Preparatory measures can be requested by a potential plaintiff or by a potential defendant (who has sufficient grounds to foresee that it would be sued).

Section 323 of the NCCCP provides, with respect solely to documents, the following preparatory measures:

- Disclosure of testament, when the requesting party considers that he or she is the heir, a co-heir or a legatee.
- Disclosure of titles in case of eviction.
- Disclosure of corporate documents of a company.

Once the preparatory measures have been completed, the claim must be filed within 30 days after their fulfilment.

In relation to the production of evidence in advance of the trial (the so-called "anticipated production of evidence"), these measures are aimed at preventing evidence from being lost. Certain evidence may be ordered in advance when there are enough grounds to consider that it will be impossible or very difficult to render it during the evidence

stage. Such evidence can be requested before courts by those who are or will be a party to a proceeding. Section 326 of the NCCCP establishes that parties can request the disclosure, protection or seizure of documents that are related to the subject matter of the claim.

The anticipated production of evidence must be carried out with the intervention of the other party, unless there are reasons of urgency which authorise its non-intervention. In that case, the court will order the intervention of a public defence attorney.

Once the proceedings have commenced, it is noteworthy that both the parties and third parties have a duty to produce documents in their possession, or disclose their location, when the documents are relevant to the case. If the document is in the possession of a third party, the court will request the third party to submit the document to the proceedings. The third party may challenge its filing if the document is of its exclusive property and disclosure might cause the third party damage.

4.2 Are there any special rules concerning the exchange of electronic documents?

There are no procedural rules concerning the exchange of electronic documents. All documents, including electronic documents, shall be submitted in paper format (for example, e-mails shall be printed and attached to the complaint or answer to the complaint). If such documents are not recognised by the other party, the party which submitted the documents can offer subsidiarily (jointly with the complaint/answer to the complaint) a system engineer's report to confirm the validity, existence and so on of the documents.

It should be noted, however, that it is not mandatory to submit documents that are difficult to reproduce because of its extent or any other good reason. In such cases, the court shall take whatever measures are necessary to prevent the other party or parties from suffering any disadvantage that arises from the lack of copies.

It has become customary to provide the court and the other parties with CD-ROMs containing the recorded evidence.

4.3 Can any documents be withheld from the other side or from the court?

Lawyers can withhold the disclosure of documents on the basis of legal professional privilege. Law No 23.187, which establishes the requisites for law practice in the City of Buenos Aires, provides in its section 6, paragraph f that it is a specific duty of lawyers to faithfully observe professional secrecy, unless the person involved expressly authorises its disclosure.

On 22 February 2008, the Supreme Court stated in *Rossi, Domingo Daniel on illicit enrichment of public officials, resolution 330* that the violation of professional secrecy occurs when a lawyer raises facts or documents that have been entrusted to him by his client on the occasion or in the exercise of his profession.

5. WITNESS EVIDENCE

5.1 Do parties exchange witness evidence prior to trial? If so, how and at what stage in the proceedings?

Parties do not exchange witness evidence prior to trial. In the introductory stage of the proceedings, parties shall propose witness evidence together with the rest of the evidence, that is, in the complaint, answer to the complaint,

counterclaim or answer. The parties shall submit a list of witnesses, indicating the names, professions and addresses thereof. Questions to witnesses may be reserved by the parties until the date of the hearing at which they will declare.

Witnesses testify about controversial facts – which are decisive to the subject matter of the proceeding – of which they have learned through any of their senses. This means that witnesses may be subject to extensive questioning about facts that are conducive to the clarification of the case.

5.2 Do witnesses give evidence at trial? If so, how? Is it possible for the court to hear oral testimony from expert or ordinary witnesses via teleconferencing, or any other remote live connection system?

At the time of starting the evidence stage, if witness evidence is admissible, the court will order that it be delivered at an oral hearing during which the witness or witnesses will be questioned. The hearing for the examination of witnesses has to be held in the presence of the judge (though, in practice, this rarely happens since it is held in the presence of the court's clerk).

Before the commencement of the declaration, witnesses shall take an oath or promise (at their choice) to tell the truth, and shall be informed of criminal punishments for false testimony or reluctance, according to the National Criminal Code (NCrC). Section 275 of the NCrC provides that a witness shall be punished with imprisonment for from one month to four years if he argues a falsehood or refuses to tell the truth, in whole or in part, in his declaration. Refusing to swear or promise to tell the truth is the same as "refusing to give evidence". Section 243 of the NCrC provides that a witness shall be punished with imprisonment for 15 days to one month, if despite being summoned, he fails to appear or provide a statement.

The hearing continues with the witness answering the same general questions asked to all witnesses, which are aimed at identifying the witness, verifying that he or she is not an excluded witness, and verifying the value of his or her testimony.

Immediately thereafter, the witness shall be submitted to the questionnaire posed by the party who has proposed him or her. The witnesses are questioned freely, respecting the substance of the questionnaire. The judge can change the order and terms of the questions posed by the party, eliminating the questions which are clearly dissimilar, and stop the examination of the witness when the questions do not provide any added value. The opposing party may request the judge to reformulate questions to the witness. Cross-examination is also admitted.

Section 125 of the NCCCP provides that hearings shall be recorded by the court in writing or by any others technical means.

The NCCCP does not contemplate the hearing of oral testimony from witnesses via teleconferencing or any other remote live connection system. However, in some jurisdictions, it is permitted to hold out-of court hearings subject to specific rules.

Additionally, when the witness is domiciled outside the jurisdiction of the court, the summons shall be done through a rogatory letter. In this case, the requesting court will request the court from the jurisdiction of the witness's

domicile to receive the witness statement. To this end, the questionnaire shall be filed jointly with the complaint, and the persons authorised shall be indicated.

5.3 Can a witness be forced to attend court for the purposes of giving evidence?

The witness is summoned by the court for the purpose of giving evidence, unless the party who proposed the witness assumes the burden of doing so.

When the witness is summoned by the court to attend a hearing, he or she shall be informed that if he or she fails to attend without a justified cause, the witness will be forced to attend to a second hearing with the assistance of the police, and will be fined.

When the party who proposed the witness assumes the burden of summoning him or her, if the witness fails to attend the hearing without a justified cause, the witness shall be considered withdrawn.

6. EXPERT EVIDENCE

6.1 Are parties permitted to use experts in the proceedings to give opinion evidence? If so, who appoints the expert?

Parties are permitted to produce expert evidence when the understanding of controversial facts by the court requires special knowledge of any science, art, industry or specialised technical activity. Thus, the expert is a technician who collaborates with the court.

The plaintiff (when filing the complaint) and the defendant (when answering) may offer expert evidence together with the rest of the evidence, indicating the expert's specialisation and the issues that the expert's evidence should cover. The defendant, at the time of answering, may:

- Challenge the admissibility of the expert evidence, stating that the defendant has no interest in it and withdraws from taking part in the production of the expert evidence.
- Propose the scope of the expert's task and observe the issues offered by the counterparty.

At the time of starting the evidence stage, if expert evidence is admissible, the court shall order the appointment of an expert by lots, from the list of court's official experts, and shall determine the issues that the expert's evidence shall cover. Before the court appoints the official expert and determines the scope of the expert's tasks, the parties are allowed to agree on the expert to be appointed and the issues that shall be covered. However, this option is rarely taken up.

Parties may also appoint a technical consultant. As opposed to the expert, the consultant is appointed by each party, and is a contributor to the party that appointed him or her. This appointment shall be informed at the time the expert evidence is offered.

6.2 Do parties exchange expert evidence prior to trial? If so, how and at what stage in the proceedings?

Parties do not exchange expert evidence prior to trial. As stated in *Section 6.1*, parties may only offer expert evidence at the introductory stage of the proceedings.

6.3 Do experts give evidence at trial? If so, how?

At the evidence stage, once the expert is appointed, he or she will be summoned by the court. The expert may accept the appointment but, if not, the court shall appoint a substitute. Once the expert has accepted the appointment, he or she shall indicate the place, date and time that the evidence will be rendered, to allow the parties, their attorneys and technical consultants to attend.

Upon the production of the evidence, the expert shall submit a report in writing that answers each of the issues and presents the conclusions of his or her examination. Unlike the expert, the technical consultant has no obligation to submit a report but may choose to do so. Although such report does not have the same value as the expert's opinion, it may help the court to assess the evidence value of the expert's report.

The court shall order the expert opinion to be forwarded to the parties, who may challenge it or request clarifications. The court can order the expert to give explanations, either verbally or in writing, the latter being the most common option.

6.4 How are experts paid and are there any rules to ensure that expert evidence is impartial?

The NCCCP provides rules to ensure the impartiality of the expert evidence. Experts can be challenged by the parties for the same reasons as for judges, including, among others, kinship, friendship, enmity, claims with the challenging party, the expert is a creditor, debtor or guarantor of one of the parties. The challenge must be filed in writing, stating the reasons and providing supporting evidence. The expert may (i) recognise the fact or keep silent, in which case the court shall replace him or her; or (ii) deny the fact, in which case there will be an ancillary proceeding. The court shall then decide whether to continue with the same expert or to replace him or her.

Experts' fees are determined according to a scale in which the percentage varies according to the amount awarded (*section 3, Decree-Law No 16.638/57*).

The judgment shall determine which party has to bear the costs of the proceeding, including the fees and expenses of the experts and technical consultants. The general principle is that the losing party has to bear the court costs. However, the experts' fees are shared equally if the court costs are ordered "as incurred". If the party that has the obligation to pay the fees fails to comply with it, the experts may claim half of their fees from the other party, notwithstanding the recovery actions that may correspond (*section 77, NCCCP*). This is so because experts are considered as auxiliaries to the court, and thus there is a duty to protect their fees regardless of the assessment of costs.

However, the losing party will not have to pay the experts' fees if it challenged the appropriateness of such evidence, or expressed no interest in it and abstained from participating in its production. In this case, the party who offered the expert evidence shall bear the fees.

If the production of the expert evidence involves great expense, the expert can request "anticipated costs". The sum shall be fixed by the court. The party who requested the expert evidence shall make the payment within five days from notification, otherwise the expert evidence will be considered withdrawn.

7. ENDING A CLAIM/ALTERNATIVE DISPUTE RESOLUTION (ADR)

7.1 What are the main ways in which a claim may be brought to an end before trial?

The ways in which a claim may be brought to an end before the ruling stage are:

- Admission of the claim by the defendant.
- Withdrawal.
- Transaction.
- Conciliation.
- Abatement of the instance.

The admission of the claim by the defendant occurs when the defendant acknowledges the claim brought by the plaintiff to be lawful and states that he or she will comply with its request. This is only applicable in cases where public policy is not involved. The defendant is allowed to acquiesce at any time during the proceedings, but before the ruling. The consequence is that the court shall have to issue a judgment, especially if there is not a simultaneous fulfilment of the plaintiff's claim.

Withdrawal occurs when the plaintiff, alone or in agreement with the defendant, declares his or her decision not to continue with the proceeding and/or waives his or her right claimed in the lawsuit.

If the plaintiff so declares before the defendant has been summoned, the consent of the latter is not necessary. Consent is, however, required if the withdrawal occurs after the defendant has been served. In this kind of withdrawal, the plaintiff may bring the same claim in a future proceeding.

The withdrawal of the right invoked by the plaintiff occurs when the plaintiff waives the right on which the claim is based. This does not require the defendant's consent. In this case, it is not possible to file the same claim in the future. If the withdrawal is admissible, the court shall issue a judgment declaring the closure of the proceeding. The costs shall be borne by the party withdrawing the claim and waiving its right.

A transaction occurs when the parties make reciprocal concessions and the controversial obligations are extinguished. This is not applicable when non-pecuniary rights are involved. The terms of the transaction shall be filed before the court, which shall examine whether the requisites for transaction are met and, if applicable, shall issue a decision. The transaction extinguishes the rights and obligations that the parties have withdrawn. The court fees are ordered "as incurred".

Conciliation is an agreement by which the parties settle their differences. While it is similar to a transaction, it can include non-pecuniary issues. It is mandatory in some cases (divorce, alimony).

The abatement of the instance occurs when the parties do not carry out the proceeding within the time limits set by law. It consists of the non-performance of any procedural action, either by the parties or by the court. It does not, however, extinguish the action, which may be exercised in a new lawsuit.

Under Argentinean law, it is not possible for a claim to be struck out on the basis that it lacks merit before the ruling stage. When a complaint is submitted, the court shall only verify whether it fulfils the requirements set by law, otherwise it shall dismiss it *in limine*. Case law has interpreted the scope of this task, stating that dismissal *in limine* is not admissible if it is based on the lack of merit, since such right of the court does not apply to the content of the arguments raised by the party. This is so unless it manifestly arises that the claim has no legal grounds, either because it has an immoral subject matter or it is forbidden by law (*Blumentti Rodolfo Mario and other v Di Buccio Rodolfo Pedro and others, National Commercial Court of Appeals, Room B, 19 October 2012*).

7.2 What ADR procedures are available?

The ADR methods provided by procedural rules are conciliation, mediation, arbitration and expert determination.

As stated in *Section 2.2* above, in some provinces in Argentina (including the Autonomous City of Buenos Aires), the parties are required to try to resolve their disputes without resorting to litigation by pre-trial mandatory mediation proceedings. As regards conciliation, see *Section 7.1*.

The NCCCP provides that parties may submit their disputes to arbitration. In some cases, it is imposed by a legal provision (for example, to determine the price in a service lease agreement). It may be submitted before or during any court proceeding, regardless of the status of the proceeding.

In addition, the NCCCP establishes that parties shall entrust the determination of specific factual issues to one or more persons with expertise in a particular subject matter in cases which require specific knowledge. It is provided as an ideal ADR method in matters that require expert advice, allowing the judge to overcome technical aspects that he or she does not know.

The expert's decision is binding on the court. Expert determination is admissible either during a court proceeding or outside of it.

In addition to the provisions set forth in the procedural rules, parties may agree to submit their disputes to negotiation, mediation, conciliation or arbitration provided by specialised institutions, such as the General Arbitral Tribunal of the Buenos Aires Stock Exchange, Centro Empresarial de Mediación y Arbitraje (CEMA), the International Chamber of Commerce and the London Court of International Arbitration.

7.3 Can the court compel the parties to use ADR?

As stated in *Section 7.2*, in some cases, ADR proceedings are mandatory. The arbitral agreements executed by the parties, as a general rule, are enforceable under Argentinean law. In addition to those situations, it is important to highlight that courts may order the appearance of the parties before them at any time during the proceeding, in order to try to reach an agreement.

8. TRIAL

8.1 What are the main stages of a civil trial? How long would a significant commercial litigation trial last?

As stated in *Section 3.2* above, the structure of commercial and civil proceedings in Argentina consists of four stages: (i) the introductory stage; (ii) the evidence stage; (iii) the ruling stage; and (iv) the appeal stage.

The introductory stage lasts approximately 60 calendar days, from the filing of the complaint until a preliminary hearing. This term may be extended if the plaintiff is not able to summons the defendant (if, for example, it does not know the defendant's domicile) or if the defendant has filed a counterclaim and/or preliminary motions (since the court shall forward them to the plaintiff to answer). In the case of submission of preliminary motions, they may have to be considered before the evidence stage, in which case the term would be extended even further.

According to the NCCCP, the evidence stage lasts 40 calendar days from when the preliminary hearing is held. However, this term is frequently extended by the court depending on the amount of evidence that has to be produced and the challenges to the evidence submitted by the parties, so lasting approximately 240 to 360 calendar days.

According to the NCCCP, the ruling stage also lasts 40 calendar days, from when the court file is placed in the hands of the court to it issuing a decision on the merits. However, such term is usually extended to approximately 100 to 180 calendar days, depending on the complexity of the matter and of the court file, and on the court's backlog.

The appeal stage lasts approximately 120 to 360 calendar days, from the submission of the appeal motions until a decision on the merits from the court of appeals. This term may be extended, depending on the complexity of the matter and of the court file, and on the court's backlog.

In sum, commercial and civil proceedings last approximately two to three years in the best scenario, provided that there are no delays in the proceedings.

8.2 Are civil court hearings held in public? Are court documents available to the public?

According to section 125, paragraph 1 of the NCCCP, hearings shall be held in public unless otherwise specified. However, the court may order that whole or part of the hearing shall be held in private when it affects moral, public policy, security or privacy rights. When the cause that makes it necessary to hold the hearing in private disappears, the court shall hold it in public.

As regards court documents, section 63 of the Rules for National Justice provides those who are allowed to have access to the court file:

- Parties, their attorneys and appointed experts.
- Any attorney, who does not have to intervene in the proceedings.
- Journalists on occasion of the final judgment of the case.

However, it is common practice for anyone to have access to the file.

Nevertheless, there are cases in which only parties, their attorneys and the appointed experts are allowed to have access to the file: when it is an administrative proceeding of a confidential nature, when it deals with matters of family law or when it is a case in which its reservation is ordered specially (*section 64, Rules for National Justice*).

9. REMEDIES

9.1 What are the main remedies available prior to trial? In what circumstances can such remedies be obtained?

The general rule is that precautionary measures can be requested before or after the submission of the complaint, unless the law specifically provides that they must be requested before its filing.

The main remedies available are:

- Precautionary attachment.
- Seizure.
- Judicial intervention.
- Restraint of property.
- Order not to innovate.
- Order not to contract.
- Protection of persons.
- Generic precautionary measures.
- Anticipated production of evidence.
- Registration of pending litigation.

Precautionary measures are ordered by the court when the right that the applicant invoked is plausible and there is a well-founded fear that such right may suffer imminent and irreparable damage.

According to section 198 of the NCCCP, precautionary measures are ordered without notice to the other party in order to avoid the frustration of the measure's execution by that party. This being so, the NCCCP states that the party which requests the measure must give real or personal security, or a promissory oath to pay, for the costs and damages that the measure may cause to the other party.

9.2 What final remedies are available at trial?

As stated in *Section 9.1*, the general rule is that precautionary measures can be requested before or after the submission of the complaint unless the law specifically provides that they must be requested before its filing. Thus, the remedies available during the proceedings until the final judgment are the same as those stated above, except for measures for anticipated production of evidence.

Once the decision on the merits is rendered, it may order the following remedies:

- Declaration of the existence or scope of a right or legal status (for example, recognition of affiliation, statute of limitations).
- Recognition of a right to the prevailing party, ordering the payment of compensation for the damages caused or requiring the losing party to perform its obligations (in general, any obligation to give, to do or not to do).
- Modification of an existing legal situation (for example, divorce, adoption).

10. ENFORCEMENT

10.1 How is an award of damages enforced if a party fails to make payment voluntarily?

The enforcement of a judgment only occurs when the ruling recognises a right to the prevailing party, ordering the payment of compensation for the damages caused or requiring the losing party to perform its obligations (in general, any obligation to give, to do or not to do).

In case the losing party fails to make payment voluntarily within the term established in the judgment, the court will order an attachment at the request of the prevailing party. The court will then summon the debtor and inform the same about the attachment ordered. The debtor may then raise special motions (for example, adulteration of the judgment, statute of limitations). If the court rejects the motions, or if the debtor does not raise any, it will order that the public auction of the attached assets must proceed.

If the judgment requires the losing party to do something and it fails to do it within the term established, at the request of the creditor, the court will order the obligation to be performed at the expense of the debtor or will order compensation for damages caused, at the option of the creditor. The court may also order the debtor to pay a daily fine.

If the judgment requires the losing party not to do something but the debtor does it anyway, the court will order – at the request of the creditor – that the situation be brought back to the state that it was in, or that compensation be paid for damages caused.

If the judgment requires the losing party to give something but the debtor does not comply with it within the term established, at the request of the creditor, the court will order the seizure of the goods involved; otherwise the debtor must pay a sum of money equivalent to the goods plus the damages it may cause.

11. APPEALS

11.1 Is it possible for a defeated party to appeal a decision after the close of trial? In what circumstances will a party be allowed to appeal?

The defeated party has the right to appeal the final judgment.

The appeal, which implicitly involves an annulment challenge, allows the parties to request the revocation or modification of the final judgment by a higher court.

Parties may also request the court that issued the ruling to correct clerical errors, clarify obscure terms or cover omissions of the ruling.

11.2 What is the basic procedure for an appeal?

The appeal to revoke or modify the final judgment shall be submitted before the first instance court, without filing the grounds. The first instance court must then decide whether it is formally admissible. If it decides it is admissible, the court shall grant the appeal on the formal aspects and send the file to the court of appeals.

Once the court file is received by the court of appeals, the court will notify the parties.

The parties shall submit their grounds for appeal within ten days from receipt of such notification, challenging reasonably and concretely those sections of the ruling that they consider wrong. The court of appeals shall forward this submission to the other parties in order for them to answer.

From the above-mentioned notification, the parties also have five days to: (i) offer evidence which has been rejected or its negligence declared during the proceedings before the first instance court; (ii) produce documentary evidence not submitted during the proceedings before the first instance court, provided that such documents are dated after the commencement of the ruling stage, or dated before but the parties did not know them; (iii) propose confessional evidence, about facts that were not subject to such evidence during the proceedings before the first instance court; and (iv) request an evidence stage in case there are new facts (which have arisen after the following five days of the commencement of the evidence stage, or facts that have been rejected by the first instance court), or in case new evidence is offered.

The court of appeals shall forward to the other parties the filings made by the parties in this regard.

The evidence stage before the court of appeals is governed by the same provisions provided for the first instance's proceedings. Prior to the ruling, the parties shall submit their final arguments.

The court of appeals' judgment, whether evidence has been produced or not, is decided by majority vote. The ruling cannot decide on issues that have not been appealed, or modify the ruling in detriment of the appellant, unless the counterparty had also appealed.

12. COSTS/FUNDING

12.1 How are legal fees ordinarily charged to a client? On an hourly rate?

The charge of the legal fees to a client depends on the structure of the law firm and on the case. The firm's services may be charged:

- As an hourly rate, based on the seniority and credentials of the professionals involved.
- By stage of the proceeding, with the amount set for each of them.
- As capped fees, retainers or contingency fees.
- A mix of the different fee structures.

In addition, it should be noted that the Attorneys' Fees Law (No 21.839), in its section 7, establishes that the attorneys' legal fees for their activity during the proceedings before the first instance court shall be determined between 11%

and 20% of the amount of the process. The attorneys' fees of the losing party will be determined between 7% and 17% of the amount of the process.

According to section 6 of the Attorneys' Fees Law, to determine the amount of the fees, the following guidelines shall be considered:

- The amount involved in the proceeding.
- The nature and complexity of the case or proceeding.
- The result that has been obtained, and the relationship between the professional management of the case and the likelihood of satisfaction of the claim by the losing party.
- The quality, effectiveness and extent of the work.
- The performance with respect to the principle of celerity.
- The legal, moral and economic importance of the matter or the proceeding for future cases for the client, and the economic situation of the parties.

12.2 Are there any restrictions on lawyers entering into "no win, no fee" agreements with their clients?

There are no restrictions on lawyers entering into "no win, no fee" agreements with their clients. Section 4 of the Attorneys' Fees Law provides that attorneys may agree with their clients that the fees for their activity in one or more matters or proceedings are linked to the success and outcome of the case.

In such cases, fees may not exceed 40% of the economic result obtained without prejudice to the attorneys' right to collect fees ordered to be borne by the losing party.

When professional involvement in the outcome of the proceeding is higher than 20%, expenses that may correspond to the client's defence and the client's responsibility for the court costs shall be borne by the attorney, unless otherwise agreed.

Social security, maintenance and family matters shall not be subject to these kinds of agreement.

12.3 Is it permissible for a third party to fund a claim? Are there any restrictions on the use of such funding?

There are no express provisions in this regard, thus there are no specific restrictions. In cases of third party funding, the general rules on law concerning obligations and contracts will be applicable between the third party and the plaintiff.

Furthermore, it should be noted that a party may assign to other party contested rights and/or claims (*section 1446, NCC*).

12.4 Is it possible to obtain insurance which will cover the costs of bringing the claim?

In Argentina, civil liability insurance covers the cost of legal expenses, such as attorneys' fees. Legal expenses insurance is an additional coverage within the scope of civil liability insurance but is not considered an independent insurance (that is, the insurer is obliged protect the insured from all liabilities, claims, costs, losses, which means that it must bear the legal costs and expenses of the proceedings).

12.5 Can the court order a losing party to pay a winning party's costs? If so, in what circumstances and to what extent?

As stated in *Section 6.4* above, the judgment shall determine which party has to bear the costs of the proceeding (for example, the fee for access to court, experts' and attorneys' legal fees and costs, mediation proceeding's cost).

The general principle is provided in section 68 of the NCCCP, which states that the losing party shall bear all court costs, including those incurred by the opposing party.

The NCCCP also establishes the exceptions to the general rule.

Section 68 of the NCCCP establishes that the court may find reasons to exempt the losing party, either fully or partially, from the obligation to pay the court costs. In this case, the court shall clearly explain the reasons for such decision. The exemption encompasses the expenses incurred by the prevailing party, but the defeated party must bear its own costs and half of the common expenses.

As an additional exception, section 70 provides that the court costs may be charged to the plaintiff where the defendant admits the claim before submitting an answer to the complaint, whenever such admission is real, unconditional, timely, total and effective.

When the outcome of a lawsuit is partially favourable to both parties, the court may compensate the costs incurred by one of the parties with those incurred by the other party, or distribute the total costs between the parties. In both cases, the party which is more successful will pay less.

When either party incurs *in plus petitio* (excess in what is required), given certain requirements, such party has to bear the costs. When the proceeding is annulled by the act or omission of any party, such party must bear the costs incurred from the act or omission.

12.6 Can the court make an order providing security for costs prior to permitting a claim to proceed? If so, what are the circumstances in which such an order is possible?

Section 348 of the NCCCP establishes that when the plaintiff does not have both domicile and assets in Argentina, the defendant may raise a special motion (an *arraigo*) at the time of answering the complaint. It is intended to provide security by the plaintiff for court costs in case it has to bear them. If the first instance court considers that the special motion is admissible, it shall require from the plaintiff the provision of a security. The security bond may be real (mortgage, pledge, money) or personal (guarantor). The amount of bail is at the discretion of the court, but it must be determined in relation to the amount claimed in the complaint.

In addition, the NCCCP establishes a proceeding by which the plaintiff, before or together with the submission of the complaint and until the preliminary hearing, may request from the court the right to litigate *in forma pauperis*, that

is, to be fully or partially exempt from bearing the court costs. Such right is awarded to those who lack resources and must submit their claims before the court. This right does not preclude the fact that the petitioner may have basic and essential financial means for daily living. The proceeding to obtain the right to litigate *in forma pauperis* does not suspend the main proceedings unless the plaintiff so requests at the time of filing the complaint.

If the party who acted in the proceedings with this benefit is the prevailing party, it must, however, bear a third of the costs and expenses incurred in its defence from the sum of money awarded in its favour in the ruling.

13. COLLECTIVE ACTIONS

13.1 Can claimants with similar claims bring a collective action against an alleged wrongdoer?

Collective rights acquired constitutional status with the reform made to the NC in 1994. Sections 42 and 43 of the NC provide an abbreviated proceeding for claims with the aim of protecting users and consumers.

The CPL was modified by Law No 26.361 in 2008. This law sets forth users' and consumers' rights, and a procedural regime for their protection. Sections 52 to 58 establish that the following persons are entitled to represent users and consumers, and bring claims before the courts on their behalf:

- The affected person.
- The Ombudsman.
- The General Attorney's office.
- Users and consumers organisations (non-profit associations).

However, procedural aspects of "class actions" have never been regulated by law. On 24 February 2009, the Supreme Court, through a leading case *in re Halabi Ernesto v Executive Branch – Law 25.873 and Decree 1563/04 on application for amparo, Law 16.986* (*Halabi*), admitted a class action.

The Supreme Court decided that in those cases in which individual rights are threatened by the same fact or cause, called by the court a "homogeneous factual cause", it is reasonable for such fact to be proved and decided in a single proceeding.

The admissibility requirements set forth by the Supreme Court in *Halabi* are:

- A significant number of individual rights must be infringed by a common fact.
- The claim must be focused on the common effects, and not on those that each party could claim against individually.
- It would be unreasonable to require that each affected person submits a claim individually because of the meagre economic significance of the amount involved in each claim.
- The decision of the Supreme Court in this case applied an "opt out" criterion, following the provisions set forth in section 54 of the CPL: the judgment that declares the class action claim admissible will be *res judicata* for

the defendant and for all consumers or users who are in similar circumstances, except those who state their intention to the contrary prior to the judgment in the terms and conditions set forth by the court.

Although the Supreme Court's decisions are not binding for lower courts, the judges have a duty to harmonise their decisions with its rulings, since it is the final interpreter of the NC and the laws. Notwithstanding this, since the class action is not regulated, its admissibility will be decided case by case, and will depend on the court's criteria.

13.2 Is the procedure for bringing a collective action different to the procedure for a normal claim?

The procedure for bringing a collective action is very similar to the procedure for a normal claim, that is, it has the same structure as commercial and civil proceedings.

However, the *Halabi* case included a number of procedural requirements:

- The representative of the class members must prove that he or she is qualified to act on behalf of the class.
- The notice system implemented to ensure the general public about the existence of the case and its developments should be effective, in order to allow individuals to "opt out" or participate in the case.
- The procedure itself must be made public to prevent the superposition of claims.

14. OTHER SPECIAL FEATURES

14.1 Are there any other special features of the commercial litigation regime that litigants should be aware of?

As regards notifications, the Supreme Court, by the Agreement No 31/2011, has created an informatics system (it is an online platform that runs continuously and is accessed via the Internet) where employees and officials of the judiciary, as well as attorneys, shall be registered. After registration, a user name and a password are assigned for the receipt of notifications. This would be the "electronic domicile" of the attorney. Consequently, when submitting the first presentation before the court, a party to a proceeding must inform such electronic domicile.

Electronic notification applies to all resolutions, decisions and judgments which have to be notified to the parties by a formal notice, except for notifications to the real domicile (for example, notification of the complaint), to third parties to the proceedings, and to those that the court considers notifying by other means.

When the court orders that the parties be notified of a resolution by a formal notice, the court or the attorney (depending who has the burden of making the notice) generates the notice in the system as a pdf document containing a full copy of the resolution, and sends it to the parties via the declared electronic domicile. Meanwhile, proof of the formal notification sent by the system is attached to the court file in order to evidence the date and time of notification (generally the court places a stamp on the court file saying "electronic notification was sent to [name]" and the date).

It should be noted that electronic notification occurs when such is available in the electronic domicile. Receiving an electronic notification means that it was uploaded to the recipient's user account, making it available for reading,

notwithstanding the courtesy mail that can be sent by the system to the recipient within hours or days from the upload.

The electronic notification system is currently in force; however, it still coexists with former notification systems.

14.2 Are there any forthcoming changes to commercial litigation practice in your jurisdiction or any proposals for reform?

In relation to e-filing, Agreement No 03/15 of the Supreme Court states that, within 24 hours from the paper submission of any presentation, it shall be uploaded to the system as a digital copy in pdf format. Thus, the court, at the time of providing the submission, may state that the digital file is uploaded (making it available to the other party) or, if it has to be forwarded to the other party by a formal notice, the attorney must: (i) generate the notice in the system as a pdf document with a full copy of the resolution; (ii) attach to the notice the digital file; and (iii) send it to the electronic domicile. It is not necessary to print the submission, sign it, scan it and then upload it to the system. The holographic signature is replaced by the record given by the system as proof that the user uploaded it.

Failure to comply with the obligation to upload the digital copy within 24 hours in cases where the presentation must be forwarded to the other party has the consequence that the court shall request compliance, and, eventually, it may consider that the presentation is not submitted.

The Agreement also establishes that the system of electronic notifications will be compulsory and exclusive.

Although Agreement No 03/15 was to come into effect in May 2015, the Supreme Court, by the Agreement No 12/15, delayed its entry into force to 1 September 2015.